TEXAS REGISTER

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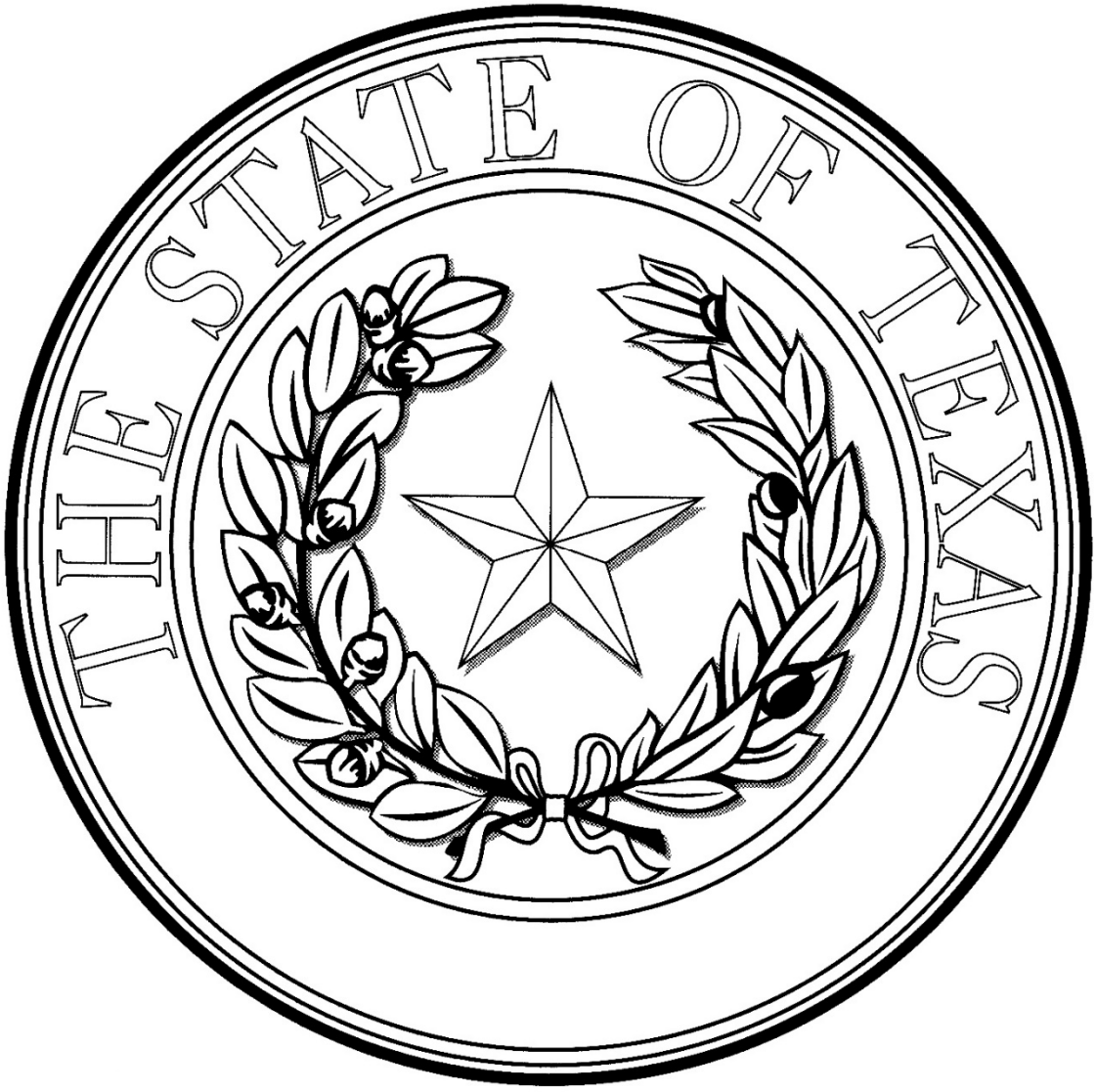

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, Texas 78711
(512) 463-5561
FAX (512) 463-5569

https://www.sos.texas.gov
register@sos.texas.gov

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In This Issue

THE GOVERNOR

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

Appointments

Appointments for April 20, 2020

Appointed to the Finance Commission of Texas, for a term to expire February 1, 2026, Hector J. Cerna of Eagle Pass, Texas (Mr. Cerna is being reappointed).

Appointed to the Finance Commission of Texas, for a term to expire February 1, 2026, Sharon McCormick of Frisco, Texas (replacing Stacy G. London of Houston, whose term expired).

Appointed to the Finance Commission of Texas, for a term to expire February 1, 2026, Laura Nassri Warren of Palmhurst, Texas (replacing Lori B. McCool of Boerne, whose term expired).

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Tomeka Moses Herod of Allen, Texas (replacing Vanessa F. Hicks-Callaway of Victoria, who resigned).

Appointed to the Texas State Board of Public Accountancy, for a term to expire January 31, 2025, Jeannette P. Smith of Mission, Texas (replacing Cassandra S. "Cassie" Ruiz of Prosper, who resigned).

Appointments for April 27, 2020

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2021, Kenneth Darden of Livingston, Texas (Mr. Darden is being reappointed).

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2021, Diana G. Delaunay of Arroyo City, Texas (replacing Kenneth R. "Kenny" Koncaba, Jr. of Friendswood, whose term expired).

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2021, Jennifer M. "Jenn" Gonzalez, Ph.D. of Dallas, Texas (replacing Paula Jean Margeson of Garden Grove, whose term expired).

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2021, Derrick L. Neal of Georgetown, Texas (replacing Amy R. Granberry of Portland, whose term expired).

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2025, Michael R. "Mike" Goodwin of Boerne, Texas (Mr. Goodwin is being reappointed).

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2025, Doni K. Green of Bedford, Texas (Ms. Green is being reappointed).

Appointed to the Housing and Health Services Coordination Council, for a term to expire September 1, 2025, Donna S. Klaeger of Horseshoe Bay, Texas (replacing Mark A. Mayfield of Marble Falls, whose term expired).

TRD-202001713

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Executive Order GA-18

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

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

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

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

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

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

WHEREAS, shortly before Executive Order GA-08 expired, I issued Executive Order GA-14 on March 31, 2020, based on the President's announcement that the restrictive social-distancing Guidelines should extend through April 30, 2020, in light of advice from Dr. Anthony Fauci and Dr. Deborah Birx, and also based on guidance by DSHS Commissioner Dr. Hellerstedt and Dr. Birx that the spread of COVID-19 can be reduced by minimizing social gatherings; and

WHEREAS, Executive Order GA-14 superseded Executive Order GA-08 and expanded the social-distancing restrictions and other obligations for Texans that are aimed at slowing the spread of COVID-19, including by limiting social gatherings and in-person contact with people (other than those in the same household) to providing or obtaining "essential services," and by expressly adopting federal guidance that provides a list of critical-infrastructure sectors, workers, and functions that should continue as "essential services" during the COVID-19 response; and

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

WHEREAS, on April 17, 2020, I therefore issued Executive Order GA-17, creating the Governor's Strike Force to Open Texas to study

and make recommendations on safely and strategically restarting and revitalizing all aspects of the Lone Star State-work, school, entertainment, and culture; and

WHEREAS, also on April 17, 2020, I issued Executive Order GA-16 to replace Executive Order GA-14, and while Executive Order GA-16 generally continued through April 30, 2020, the same social-distancing restrictions and other obligations for Texans according to federal guidelines, it offered a safe, strategic first step to Open Texas, including permitting retail pick-up and delivery services; and

WHEREAS, Executive Order GA-16 is set to expire at 11:59 p.m. on April 30, 2020; and

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

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

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

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

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

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

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

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through May 15, 2020, subject to extension based on the status of COVID-19 in Texas and the recommendations of the Governor's Strike Force to Open Texas, the White House Coronavirus Task Force, and the CDC:

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

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

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

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

2. Starting at 12:01 a.m. on Friday, May 1, 2020:

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

b) Dine-in restaurant services, for restaurants that operate at up to 25 percent of the total listed occupancy of the restaurant; provided, however, that (a) this applies only to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages and are therefore not required to post the 51 percent sign required by Texas law as determined by the Texas Alcoholic Beverage Commission, and (b) valet services are prohibited except for vehicles with placards or plates for disabled parking.

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

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

e) Museums and libraries that operate at up to 25 percent of the total listed occupancy; provided, however, that (a) local public museums and local public libraries may so operate only if permitted by the local government, and (b) any components of museums or libraries that have interactive functions or exhibits, including child play areas, must remain closed.

f) For Texas counties that have filed with DSHS, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID-19, those in-store retail services, dine-in restaurant services, movie theaters, shopping malls, and museums and libraries, as otherwise defined and limited above, may operate at up to 50 percent (as opposed to 25 percent) of the total listed occupancy.

g) Services provided by an individual working alone in an office.

h) Golf course operations.

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

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

The conditions and limitations set forth above for reopened services shall not apply to essential services. Notwithstanding anything herein to the contrary, the governor may by proclamation identify any county or counties in which reopened services are thereafter prohibited, in the governor's sole discretion, based on the governor's determination in consultation with medical professionals that only essential services should be permitted in the county, including based on factors such as an increase in the transmission of COVID-19 or in the amount of COVID-19-related hospitalizations or fatalities.

In providing or obtaining essential services or reopened services, people and businesses should follow the minimum standard health pro-

tocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, and should implement social distancing, work from home if possible, and practice good hygiene, environmental cleanliness, and sanitation. This includes also following, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the President and the CDC, as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.

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

People shall avoid visiting bars, gyms, public swimming pools, interactive amusement venues such as bowling alleys and video arcades, massage establishments, tattoo studios, piercing studios, or cosmetology salons. The use of drive-thru, pickup, or delivery options for food and drinks remains allowed and highly encouraged throughout the limited duration of this executive order.

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

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

In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the strict terms required by the Texas Education Agency. Private schools and institutions of higher education should establish similar terms to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home.

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

This executive order supersedes Executive Order GA-16, but does not supersede Executive Orders GA-10, GA-11, GA-12, GA-13, GA-15, or GA-17. This executive order shall remain in effect and in full force until 11:59 p.m. on May 15, 2020, unless it is modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 27th day of April, 2020.

Greg Abbott, Governor

TRD-202001687

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Executive Order GA-19

Relating to hospital capacity during the COVID-19 disaster.

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

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

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

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

WHEREAS, a shortage of hospital capacity or personal protective equipment would hinder efforts to cope with the COVID-19 disaster; and

WHEREAS, hospital capacity and personal protective equipment were being depleted by ongoing surgeries and procedures; and

WHEREAS, various hospital licensing requirements would stand in the way of implementing increased occupancy in the event of surge needs for hospital capacity due to COVID-19; and

WHEREAS, I therefore issued Executive Order GA-09 on March 22, 2020, and then superseded it with Executive Order GA-15 on April 17, 2020, in an effort to avoid a shortage of hospital capacity or personal protective equipment; and

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

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

WHEREAS, under Section 418.016(a), the "governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business 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;" and

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

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis beginning at 12:01 a.m. on May 1, 2020:

All licensed health care professionals shall be limited in their practice by, and must comply with, any emergency rules promulgated by

their respective licensing agencies dictating minimum standards for safe practice during the COVID-19 disaster.

Every hospital licensed under Chapter 241 of the Texas Health and Safety Code shall reserve at least 15 percent of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients, as determined by the Texas Health and Human Services Commission.

I hereby continue the suspension of the following provisions to the extent necessary to implement increased occupancy in the event of surge needs for hospital capacity due to COVID-19:

25 TAC Sec. 133.162(d)(4)(A)(iii)(I);

25 TAC Sec. 133.163(f)(l)(A)(i)(II)-(III);

25 TAC Sec. 133.163(f)(l)(B)(i)(III)-(IV);

25 TAC Sec. 133.163(m)(l)(B)(ii);

25 TAC Sec. 133.163(t)(1)(B)(iii)-(iv);

25 TAC Sec. 133.163(t)(l)(C);

25 TAC Sec. 133.163(t)(5)(B)-(C); and

Any other pertinent regulations or statutes, upon written approval of the Office of the Governor.

This executive order will supersede Executive Order GA-15 as of 12:01 a.m. on May 1, 2020, but will not supersede Executive Orders GA-10, GA-11, GA-12, GA-13, GA-17, or GA-18. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 27th day of April, 2020.

Greg Abbott, Governor

TRD-202001688

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Executive Order GA-20

Relating to expanding travel without restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster.

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

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

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

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

WHEREAS, many early cases of COVID-19 in the State of Texas were caused by people who transmitted the virus to Texans after traveling here from other states and countries; and

WHEREAS, given the risk of COVID-19 spreading, Dr. Deborah Birx, the White House Coronavirus Response Coordinator, and Dr. Anthony Fauci, a member of the White House Coronavirus Task Force, called for people traveling from the New York metropolitan area to self-quarantine for 14 days; and

WHEREAS, I therefore issued Executive Order GA-11 on March 26, 2020, to impose a mandatory self-quarantine of 14 days for air travelers flying to Texas from certain areas experiencing substantial community spread of COVID-19, including New York and the City of New Orleans, and by proclamation on March 29, 2020, I added the State of Louisiana as well as several other states and cities; and

WHEREAS, I also issued Executive Order GA-12 on March 29, 2020, to impose a mandatory self-quarantine of 14 days for roadway travelers coming to Texas from Louisiana; and

WHEREAS, I have issued several executive orders to impose social-distancing restrictions and other obligations on Texans that are aimed at slowing the spread of COVID-19, including Executive Order GA-08, Executive Order GA-14, and Executive Order GA-16; and

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

WHEREAS, on April 17, 2020, I therefore issued executive orders to begin the process of safely and strategically restarting and revitalizing all aspects of the Lone Star State--work, school, entertainment, and culture--including the creation of an advisory strike force to provide recommendations; and

WHEREAS, today, I am expanding the reopening of businesses and services in Texas by issuing Executive Order GA-18 to replace Executive Order GA-16; and

WHEREAS, other states, including Louisiana, have likewise imposed social-distancing restrictions and other obligations on their people that have similarly slowed the spread of COVID-19, making it appropriate to reconsider the scope of the travel restrictions imposed by Executive Order GA-11 and Executive Order GA-12; and

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

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

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

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

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

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective at 12:01 a.m. on Friday, May 1, 2020:

Executive Order GA-12 is hereby rescinded and terminated in its entirety. Executive Order GA-11 and the March 29, 2020 proclamation are hereby rescinded and terminated to the extent applicable to travelers from the City of New Orleans or the State of Louisiana. Any

mandatory self-quarantine already in effect as a result of these executive orders, to the extent applicable to travelers from the City of New Orleans or the State of Louisiana, is terminated immediately as of the effective date of this executive order.

Executive Order GA-11 and the March 29, 2020, proclamation are otherwise superseded by this executive order, except that any mandatory self-quarantine already in effect thereunder, as of the effective date of this executive order, shall continue until its expiration as set forth in Executive Order GA-11.

The following restrictions shall remain in place:

Every person who enters the State of Texas as the final destination through an airport, from a point of origin or point of last departure in the following--State of California; State of Connecticut; State of New York; State of New Jersey; State of Washington; City of Atlanta, Georgia; City of Chicago, Illinois; City of Detroit, Michigan; or City of Miami, Florida--shall be subject to mandatory self-quarantine for a period of 14 days from the time of entry into Texas or the duration of the person's presence in Texas, whichever is shorter. The governor may by proclamation add to or subtract from the list of states and cities covered by this executive order. This order to self-quarantine shall not apply to people traveling in connection with military service, emergency response, health response, or critical-infrastructure functions, as may be determined by the Texas Division of Emergency Management. Each person covered under this order to self-quarantine shall be responsible for all associated costs, including transportation, lodging, food, and medical care.

A covered person shall use a form prescribed by the Texas Department of Public Safety (DPS) to designate a quarantine location in Texas, such as a residence or a hotel, and provide a full name, date of birth, home address, telephone number, and driver license or passport information. DPS Troopers, or other approved peace officers, shall collect a completed form from each covered person immediately upon disembarking and verify it against the person's driver license or passport. Providing false information on this form is a criminal offense under Section 37.10 of the Texas Penal Code. Questions about this form should be directed to DPS at (800) 525-5555.

A covered person shall proceed directly from the airport to the designated quarantine location entered on the DPS form. Any covered person exhibiting symptoms of COVID-19 shall be escorted to the designated quarantine location by a DPS Trooper.

A covered person shall remain in the designated quarantine location for a period of 14 days or the duration of the person's presence in Texas, whichever is shorter, leaving only to seek medical care or to depart from Texas. During that period, a covered person shall not allow visitors into or out of the designated quarantine location, other than a health department employee, physician, or health care provider, and shall not visit any public spaces.

DPS Special Agents will conduct unannounced visits to designated quarantine locations to verify compliance by confirming the physical presence of covered persons. Any failure to comply with this order to self-quarantine shall be a criminal offense punishable by a fine not to exceed $1,000, confinement in jail for a term not to exceed 180 days, or both.

This executive order supersedes Executive Order GA-11 and Executive Order GA-12 as set forth above, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-18, or GA-19. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 27 day of April, 2020.

Greg Abbott, Governor

TRD-202001690

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Proclamation 41-3731

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, Greg Abbott, Governor of the State of Texas, do hereby certify that the severe weather and tornadoes that occurred on April 22, 2020, caused widespread and severe property damage and loss of life in Jasper, Lamar, Newton, Polk, Red River, and San Jacinto counties.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 29th day of April, 2020.

Greg Abbott, Governor

TRD-202001715

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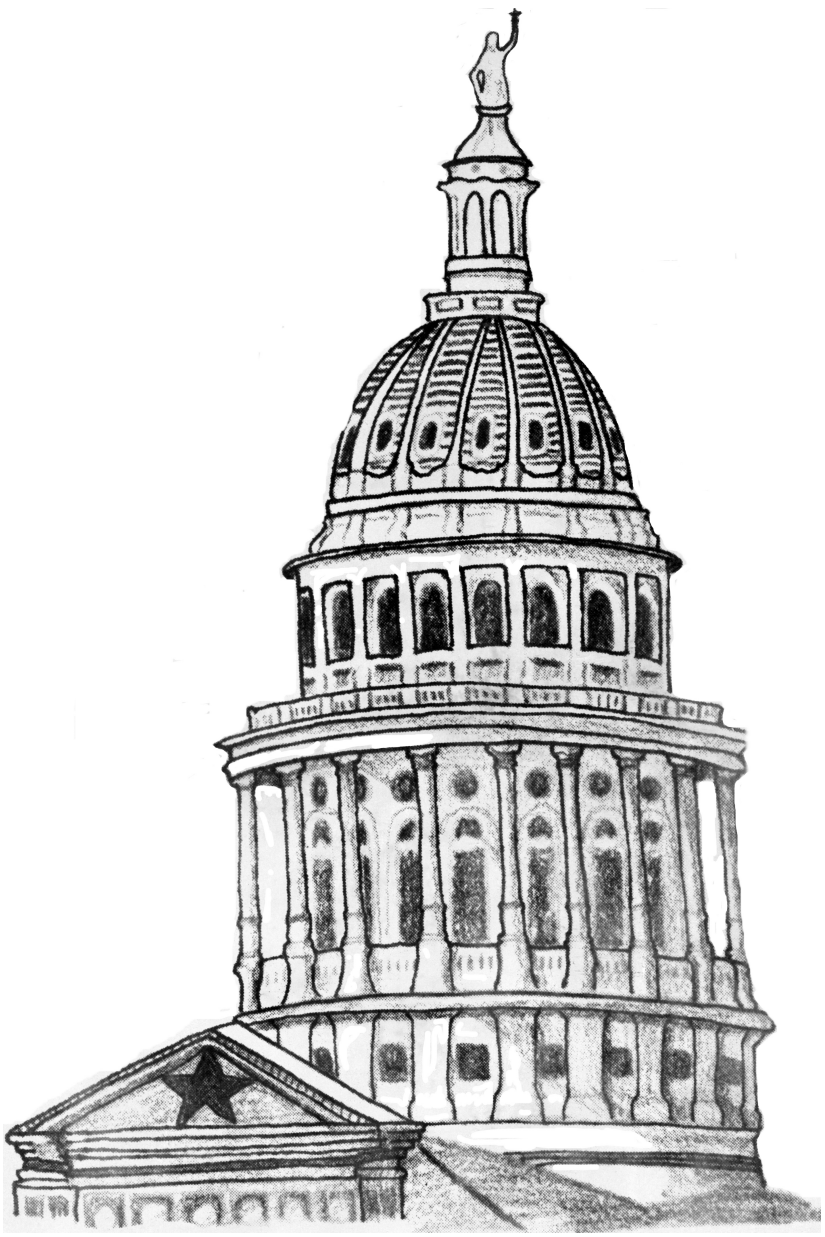

THE ATTORNEY GENERAL

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-0347-KP

Requestor:

The Honorable Dan Flynn

Chair, House Committee on Defense & Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county judge to issue emergency orders regulating the business of pawnshops during a declared disaster (RQ-0347-KP)

Briefs requested by April 28, 2020

RQ-0348-KP

Requestor:

Mr. Charles G. Cooper

Banking Commissioner

Texas Department of Banking

2601 North Lamar Boulevard

Austin, Texas 78705

Re: Whether a professional employer organization that conducts money transmission as defined in the Finance Code is subject to licensure under the Finance Code, notwithstanding licensure as a professional employer organization under the Labor Code (RQ-0348-KP)

Briefs requested by May 22, 2020

RQ-0349-KP

Requestor:

The Honorable Donna Campbell, M.D.

Chair, Committee on Veterans Affairs & Border Security

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether Payment Protection Program loans are authorized investments under subsection 2259.009(a)(4) the Public Funds Investment Act (RQ-0349-KP)

Briefs requested by May 14, 2020

RQ-0350-KP

Requestor:

The Honorable Sharen Wilson

Tarrant County Criminal District Attorney

401 West Belknap

Fort Worth, Texas 76196

Re: Whether an independent school district may enter into a long-term ground lease with a private entity that intends to develop surplus property owned by the district for non-educational purposes, where the expected financial benefit to the district will exceed the current value of a sale of the property (RQ-0350-KP)

Briefs requested by May 22, 2020

RQ-0351-KP

Requestor:

The Honorable Mayes Middleton

Co-Chair, Joint Interim Committee to Study a Coastal Barrier System

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Procedures for conducting appraisal review board hearings during the COVID-19 disaster (RQ-0351-KP)

RQ-0352-KP

Requestor:

The Honorable Dade Phelan

Chair, House Committee on State Affairs

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a local governmental entity under an emergency declaration has the authority to prevent an owner of a second home from occupying that property or limiting occupancy of housing based on length of the occupancy's term (RQ-0352-KP)

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

TRD-202001692
Lesley French
General Counsel
Office of the Attorney General
Filed: April 28, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0300

The Honorable Deborah Earley

Blanco County Attorney

Post Office Box 471

Johnson City, Texas 78636

Re: Authority of a governmental body subject to section 551.007 of the Government Code to regulate public comment sessions during open meetings (RQ-0313-KP)

S U M M A R Y

Government Code subsection 551.007(b) requires certain governmental bodies to permit public comment on an item on the agenda for an open meeting either before or during the body's consideration of the item. A governmental body may satisfy subsection 551.007(b)'s requirements by holding a single public comment period at the beginning of an open meeting to address all items on the agenda.

Government Code subsection 551.007(c) authorizes a governmental body subject to its provisions to adopt reasonable rules regarding the public's right to address the body, including time limitations. Pursuant to subsection 551.007(c), a governmental body may adopt a rule capping the total amount of time a member of the public has to address all items on the agenda if the rule is reasonable.

Opinion No. KP-0301

The Honorable John T. Hubert

Kleberg and Kenedy Counties District Attorney

Kleberg County Courthouse

Post Office Box 1471

Kingsville, Texas 78364

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

S U M M A R Y

Texas Constitution article XVI, section 65 provides for the automatic resignation of an officer who announces candidacy for another office of profit or trust at any time when the unexpired term of his or her office exceeds one year and 30 days. An "announcement" under this provision must be both certain and public. Under the facts you describe, a court would likely conclude that the Kenedy County Constable did not announce his candidacy under article XVI, section 65.

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

TRD-202001693
Lesley French
General Counsel
Office of the Attorney General
Filed: April 28, 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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIR

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER E. POST AWARD AND ASSET MANAGEMENT REQUIREMENTS

10 TAC §10.404

The Texas Department of Housing and Community Affairs (TDHCA) adopts on an emergency basis an amendment to 10 TAC §10.404, concerning Reserve Accounts. The purpose of this amendment is to address circumstances created by the COVID-19 pandemic, a federal and state declared disaster, which is causing significant stresses on households in multifamily properties regulated by the Department. Many households have experienced a sudden decline in income as a result of business closures and this has made it difficult for them to make rent and utility payments and threaten their ability to remain in their current residence.

Multifamily properties funded by TDHCA are required to fund various reserve accounts including replacement reserves to support the long term successful operation of each property. Current rules restrict the use of these replacement reserves, although relevant statute allows the Department to adopt rules to describe circumstances for alternative uses for these reserve accounts. Allowing the temporary use of reserve for replacement funds to fill the existing gaps in tenants' ability to pay rent during this unprecedented economic event is necessary to maintain the stability of families sheltering in place and the operating stability of multifamily properties. The current rule prohibits use of reserve replacement funds to assist in rent or utility payments in 10 TAC §10.404(a)(7)(C)(i), and creates an imminent peril to the health, safety, and welfare of occupants of multifamily developments in the TDHCA portfolio that are required to maintain such reserve accounts. This necessitates adoption of a rule on fewer than 30 days' notice. There are no costs associated with this amendment.

The Department regulates the collection and use of reserve accounts for multifamily properties. Reserve accounts are grouped by purpose and type of account in 10 TAC §10.404. Replacement Reserve Accounts are a specialized type of account required by Tex. Gov't Code, §2306.186 but further limited in their use by 10 TAC §10.404 (a)(7)(C)(i). The Department's rule limits the Replacement Reserve Accounts such that they not be used "for expenses other than necessary repairs, including property taxes or insurance". However, Tex. Gov't Code, §2306.186(j)(2), provides the Department with broader authority to "identify circumstances in which money in the reserve accounts may: (A) be used for expenses other than necessary repairs, including property taxes or insurance".

Therefore, the Department, on an emergency basis, is amending 10 TAC §10.404(a)(9) to add the circumstances for another use for the Replacement Reserve account, specifically to provide rent and utility assistance to residents who have been economically impacted by disasters such as COVID-19. This amendment is adopted on an emergency basis to support resident households who have suffered a sudden loss of income or significant increase in expenses due to the COVID-19 pandemic which could result in the temporary inability to pay rent or utilities and potential eviction.

The Board adopted the final order authorizing the emergency rulemaking on April 23, 2020.

The amendment is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3) - (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or

through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) Exceptions to Replacement Reserve Account.

(A) This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(B) In areas affected by a state or federally declared disaster, the Board may determine that Replacement Reserve Accounts may be used for a defined period of time, and subject to such conditions as may be made by the Department, to fund rent payments and eligible utility payments (i.e. made by tenants under the lease to the development), in the form of grants or repayable no fee or interest advances to tenants who are experiencing a loss of income or increased household expenses due to the disaster.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

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 27, 2020.

TRD-202001666

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 27, 2020
Expiration date: August 24, 2020
For further information, please call: (512) 475-1762

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT
SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.7

The State Board of Dental Examiners (Board) adopts on an emergency basis an amendment to 22 TAC §108.7, in response to the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 19, and dictates the minimum standards for safe practice during the COVID-19 disaster.

This rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by failure to adhere to the minimum standards for safe practice during the COVID-19 pandemic.

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

The emergency rule amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Dental Practice Act, Chapters 251 and 263, Texas Occupations Code.

§108.7. Minimum Standard of Care, General.
Each dentist shall:

(1) conduct his/her practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances;

(2) maintain patient records that meet the requirements set forth in §108.8 of this title (relating to Records of the Dentist);

(3) maintain and review an initial medical history and perform a limited physical evaluation for all dental patients;

(A) The medical history shall include, but shall not necessarily be limited to, known allergies to drugs, serious illness, current medications, previous hospitalizations and significant surgery, and a review of the physiologic systems obtained by patient history. A "check list," for consistency, may be utilized in obtaining initial information. The dentist shall review the medical history with the patient at any time a reasonable and prudent dentist would do so under the same or similar circumstances.

(B) The limited physical examination shall include, but shall not necessarily be limited to, measurement of blood pressure and pulse/heart rate. Blood pressure and pulse/heart rate measurements are not required to be taken on any patient twelve (12) years of age or younger, unless the patient's medical condition or history indicate such a need.

(4) obtain and review an updated medical history and limited physical evaluation when a reasonable and prudent dentist would do so under the same or similar circumstances. At a minimum, a medical history and limited physical evaluation should be obtained and reviewed at the initial appointment and updated annually;

(5) for office emergencies:

(A) maintain a positive pressure breathing apparatus including oxygen which shall be in working order;

(B) maintain other emergency equipment and/or currently dated drugs as a reasonable and prudent dentist with the same or similar training and experience under the same or similar circumstances would maintain;

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist under the same or similar circumstances; and

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies;

(6) successfully complete a current course in basic cardiopulmonary resuscitation given or approved by either the American Heart Association or the American Red Cross;

(7) maintain a written informed consent signed by the patient, or a parent or legal guardian of the patient, if the patient is a minor, or the patient has been adjudicated incompetent to manage the patient's personal affairs. A signed, written informed consent is required for all treatment plans and procedures where a reasonable possibility of complications from the treatment planned or a procedure exists, or the treatment plans and procedures involve risks or hazards that could influence a reasonable person in making a decision to give or withhold consent. Such consents must disclose any and all complications, risks and hazards;

(8) safeguard patients against avoidable infections as required by this chapter;

(9) not be negligent in the provision of dental services;

(10) use proper diligence in the dentist's practice;

(11) maintain a centralized inventory of drugs;

(12) report patient death or hospitalization as required by this chapter;

(13) abide by sanitation requirements as required by this chapter;

(14) abide by patient abandonment requirements as required by this chapter;

(15) abide by requirements concerning notification of discontinuance of practice as required by this chapter; and[.]

(16) conduct his/her practice according to the minimum standards for safe practice during the COVID-19 disaster pursuant to the Centers for Disease Control Guidelines and the following guidelines:

(A) before dental treatment begins:

(i) each dental office shall create COVID-19 procedures and provide dental health care personnel (DHCP) training regarding the COVID-19 office procedures. These procedures must include the pre-schedule screening protocol, in office screening protocol for patients and DHCP, office's transmission-based infection control precautions, as well as protocol to be implemented if DHCP suspects an exposure to COVID-19;

(ii) DHCP experiencing influenza-like-illness (ILI) (fever with either cough or sore throat, muscle aches) should not report to work;

(iii) DHCP who are of older age, have a pre-existing, medically compromised condition, pregnant, etc., are perceived to be at a higher risk of contracting COVID-19 from contact with known or suspected COVID-19 patients. Providers who do not fall into these categories (older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy) may be prioritized to provide care;

(iv) all DHCP should self-monitor by remaining alert to any respiratory symptoms (e.g., cough, shortness of breath, sore throat) and check their temperature twice a day, regardless of the presence of other symptoms consistent with a COVID-19 infection;

(v) contact your local health department immediately if you suspect a patient has COVID-19, to prevent transmission to DHCP or other patients;

(vi) remove magazines, reading materials, toys and other objects that may be touched by others and which are not easily disinfected;

(vii) place signage in the dental office for instructing staff and patients on standard recommendations for respiratory hygiene/cough etiquette and social distancing;

(viii) develop and utilize an office protocol to screen all patients by phone before scheduling and during patient confirmation prior to appointment;

(ix) schedule appointments apart enough to minimize possible contact with other patients in the waiting room; and

(x) notify patients that they may not bring a companion to their appointment, unless the patient requires assistance (e.g., pediatric patients, special needs patients, elderly patients, etc.). Patient companions should also be screened for signs and symptoms of COVID-19 during patient check-in;

(B) during dental care:

(i) perform in office screening protocol which must include a temperature check, upon patient arrival;

(ii) DHCP shall adhere to standard precautions, which include but are not limited to: hand hygiene, use of personal protective equipment (PPE), respiratory hygiene/etiquette, sharps safety, safe injection practices, sterile instruments and devices, clean and disinfected environmental surfaces;

(iii) DHCP shall implement Transmission-Based Precautions, including N-95 respirator masks, KN-95 masks, or their substantial equivalent for all DHCP who will be within six (6) feet of any and all procedures likely to involve aerosols;

(iv) DHCP shall adhere to the standard sequence of donning and doffing of PPE;

(v) DHCP shall complete the full treatment of one patient before leaving the treatment area and on to another patient; and

(vi) DHCP shall use only hand instruments and low speed polishing tools for hygiene services;

(C) clinical technique:

(i) Patients should perform a pre procedure rinse, if medically safe;

(ii) reduce aerosol production as much as possible, as the transmission of COVID-19 seems to occur via droplets or aerosols, DHCP may prioritize the use of hand instrumentation; and

(iii) DHCP should use dental isolation if an aerosol-producing procedure is being performed to help minimize aerosol or spatter;

(D) after dental care is provided:

(i) instruct patients to contact the office if they experience COVID-19 symptoms within 14 days after the dental appointment; and

(ii) DHCPs should change from scrubs and PPE to personal clothing before returning home.

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 30, 2020.

TRD-202001736
Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: April 30, 2020
Expiration date: August 27, 2020
For further information, please call: (512) 305-9380

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts on an emergency basis the emergency amendment to 22 TAC §190.8(2)(U) for purposes of the COVID-19 disaster declaration. The amendment is being made as a result of Executive Order GA-19 and adds a definition of "Unprofessional and Dishonorable Conduct" under 22 TAC §190.8(2)(U).

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by potential unnecessary exposure of both patients and health care professionals in undertaking and performing health care during the COVID-19 pandemic.

The amended definition of unprofessional and dishonorable conduct is applicable only for purposes of the COVID-19 disaster declaration and Executive Order GA-19 and shall remain effec-

tive unless Executive Order GA-19 is terminated, modified, or extended by the Governor.

The emergency rule amendment is adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, procedures, or autopsies as required under Chapter 49 of the Code of Criminal Procedure;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a valid practitioner-patient relationship. Establishing a practitioner-patient relationship is not required for:

(i) a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease; or

(ii) a physician to prescribe dangerous drugs and/or vaccines for post-exposure prophylaxis of disease for close contacts of a patient if the physician diagnoses the patient with one or more of the following infectious diseases listed in subclauses (I) - (VII) of this clause, or is providing public health medical services pursuant to a memorandum of understanding entered into between the board and the Department of State Health Services. For the purpose of this clause, a "close contact" is defined as a member of the patient's household or any person with significant exposure to the patient for whom post-exposure prophylaxis is recommended by the Centers for Disease Control and Prevention, Texas Department of State Health Services, or local health department or authority ("local health authority or department" as defined under Chapter 81 of the Texas Health and Safety Code). The physician must document the treatment provided to the patient's close contact(s) in the patient's medical record. Such documentation at a minimum must include the close contact's name, drug prescribed, and the date that the prescription was provided.

(I) Influenza;

(II) Invasive Haemophilus influenzae Type B;

(III) Meningococcal disease;

(IV) Pertussis;

(V) Scabies;

(VI) Varicella zoster; or

(VII) a communicable disease determined by the Texas Department of State Health Services to:

(-a-) present an immediate threat of a high risk of death or serious long-term disability to a large number of people; and

(-b-) create a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(N) providing on-call back-up by a person who is not licensed to practice medicine in this state or who does not have adequate training and experience.

(O) delegating the performance of nerve conduction studies to a person who is not licensed as a physician or physical therapist without:

(i) first selecting the appropriate nerve conductions to be performed;

(ii) ensuring that the person performing the study is adequately trained;

(iii) being onsite during the performance of the study; and

(iv) being immediately available to provide the person with assistance and direction.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility, laboratory, or pharmacy without disclosing the existence of the licensee's ownership interest in the entity to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(Q) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(R) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(S) contacting or attempting to contact a complainant, witness, medical peer review committee member, or professional review body as defined under §160.001 of the Act regarding statements used in an active investigation by the board for purposes of intimidation. It is not a violation for a licensee under investigation to have contact with a complainant, witness, medical peer review committee member, or professional review body if the contact is in the normal course of business and unrelated to the investigation.

(T) failing to timely submit complete forms for purposes of registration as set out in §166.1 of this title (relating to Physician Registration) when it is the intent of the licensee to maintain licensure with the board as indicated through submission of an application and fees prior to one year after a permit expires.

(U) Notice and Compliance Requirements Concerning COVID-19 Minimum Standards of Safe Practice

(i) All physicians providing patient care or engaging in an in-person patient encounter, must implement the following minimum COVID-19 standards of safe practice.

(I) a mask must be worn by both the patient and physician or the physician's delegate when in proximity of the patient (meaning less than a 6-foot distance between the patient and the physician or the physician's delegate);

(II) follow policies the physician, medical and healthcare practice, or facility has in place regarding COVID-19 screening and testing and/or screening patients;

(III) that, before any encounter, patients must be screened for potential symptoms of COVID-19 or verified previously screened within last 20 days; and

(IV) that prior to care involving a medical procedure or surgery on the mucous membranes, including the respiratory tract, with a high risk of aerosol transmission, the minimum safety equipment used by a physician or physician's delegate should include N95 masks, or an equivalent protection from aerosolized particles, and face shields.

(ii) All physicians providing patient care or engaging in an in-person patient encounter in medical and healthcare practices, offices, and facilities, other than hospitals as defined under Chapter 241 of the Texas Health & Safety Code, shall post a COVID-19 Minimum Standards of Safe Practice Notice (COVID-19 Notice), delineating the minimum standards of safe practice described in this subsection, in each public area and treatment room or area of the office, practice, or facility.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an

investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of §164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of §164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of §164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to §160.052 of the Act or otherwise.

(6) Discipline based on Criminal Conviction. The board is authorized by the following separate statutes to take disciplinary action against a licensee based on a criminal conviction:

(A) Felonies.

(i) Section 164.051(a)(2)(B) of the Medical Practice Act, §204.303(a)(2) of the Physician Assistant Act, and §203.351(a)(7) of the Acupuncture Act, (collectively, the "Licensing Acts") authorize the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any felony.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a felony that directly relates to the duties and responsibilities of the licensed occupation.

(iii) Because the provisions of the Licensing Acts may be based on either conviction or a form of deferred adjudication, the board determines that the requirements of the Act are stricter than the requirements of Chapter 53 and, therefore, the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) Upon the initial conviction for any felony, the board shall suspend a physician's license, in accordance with §164.057(a)(1)(A), of the Act.

(v) Upon final conviction for any felony, the board shall revoke a physician's license, in accordance with §164.057(b) of the Act.

(B) Misdemeanors.

(i) Section 164.051(a)(2)(B) of the Act authorizes the board to take disciplinary action based on a conviction, deferred adjudication, community supervision, or deferred disposition for any misdemeanor involving moral turpitude.

(ii) Chapter 53, Texas Occupations Code authorizes the board to revoke or suspend a license on the grounds that a person has been convicted of a misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(iii) For a misdemeanor involving moral turpitude, the provisions of §164.051(a)(2) of the Medical Practice Act and §205.351(a)(7) of the Acupuncture Act, may be based on either conviction or a form of deferred adjudication, and therefore the board determines that the requirements of these licensing acts are stricter than the requirements of Chapter 53 and the board is not required to comply with Chapter 53, pursuant to §153.0045 of the Act.

(iv) The Medical Practice Act and the Acupuncture Act do not authorize disciplinary action based on conviction for a misdemeanor that does not involve moral turpitude. The Physician Assistant Act does not authorize disciplinary action based on conviction for a misdemeanor. Therefore these licensing acts are not stricter than the requirements of Chapter 53 in those situations. In such situations, the conviction will be considered to directly relate to the practice of medicine if the act:

(I) arose out of the practice of medicine, as defined by the Act;

(II) arose out of the practice location of the physician;

(III) involves a patient or former patient;

(IV) involves any other health professional with whom the physician has or has had a professional relationship;

(V) involves the prescribing, sale, distribution, or use of any dangerous drug or controlled substance; or

(VI) involves the billing for or any financial arrangement regarding any medical service;

(v) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those which:

(I) have been found by Texas state courts to be misdemeanors of moral turpitude;

(II) involve dishonesty, fraud, deceit, misrepresentation, violence; or

(III) reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

(vi) Those misdemeanors found by state Texas courts not to be crimes of moral turpitude are not misdemeanors of moral turpitude within the meaning of the Act.

(C) In accordance with §164.058 of the Act, the board shall suspend the license of a licensee serving a prison term in a state or federal penitentiary during the term of the incarceration regardless of the offense.

(7) Violations of the Health and Safety Code. In accordance with §164.055 of the Act, the Board shall take appropriate disciplinary action against a physician who violates §170.002 or Chapter 171, Texas Health and Safety Code.

(8) For purposes of §164.051(a)(4)(C) of the Texas Occupations Code, any use of a substance listed in Schedule I, as established by the Commissioner of the Department of State Health Services under Chapter 481, or as established under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.) constitutes excessive use of such substance.

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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Scott Freshour
General Counsel
Texas Medical Board
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For further information, please call: (512) 305-7016

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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 §500.3

The Executive Commissioner of the Texas 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, new §500.3, concerning an emergency rule in response to COVID-19 on the designation of licensed hospital space to allow hospitals to treat and house patients more effectively.

As authorized by Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The 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. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for the designation of licensed hospital space 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 is adopting an emergency rule to temporarily permit a currently licensed hospital to designate a specific part of its hospital for use as an off-site facility by another hospital, and to allow another currently licensed hospital to apply to use that designated hospital space as an off-site facility for inpatient care.

STATUTORY AUTHORITY

The emergency rule 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. Health and Safety Code, §241.026 requires the Commission to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals. 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 Health and Human Services system agencies.

§500.3. Designation of Licensed Hospital Space in Response to COVID-19.

(a) Using a form prescribed by the Texas Health and Human Services Commission (HHSC), a hospital currently licensed under Health and Safety Code Chapter 241 may designate a specific portion of its facility for use as an off-site facility by another hospital. A portion of the facility designated under this subsection may not be used under the designating hospital's license while the designation is effective.

(b) Another hospital currently licensed under Health and Safety Code Chapter 241 may apply to use a portion of the facility designated under subsection (a) of this section as an off-site facility for inpatient care under §500.1 of this chapter (relating to Hospital Off-Site Facilities in Response to COVID-19) in the same manner as it would apply to use a facility described by §500.1(b)(2) of this chapter.

(c) A hospital that uses a portion of the facility designated under subsection (a) of this section as an off-site facility for inpatient care is responsible under its license for complying with all applicable federal and state statutes and rules, including §500.1 of this chapter, while using the portion of the facility.

(d) A hospital may withdraw its designation of the portion of the facility upon 10 days' notice to HHSC and to the hospital using the portion of the facility as an off-site facility. HHSC, at its sole discretion, may withdraw a hospital's designation of the portion of the facility at any time. Any patients being treated in the portion of the facility shall be safely relocated or transferred as soon as practicable according to the policies and procedures of the hospital using the portion of the facility as an off-site facility.

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) 834-4591

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SUBCHAPTER D. CHEMICAL DEPENDENCY TREATMENT FACILITIES

26 TAC §500.43, §500.44

The Executive Commissioner of the Texas 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, new §500.43, con-

cerning an emergency rule in response to COVID-19 on service delivery via two-way, real-time internet or telephone communications in order to reduce the risk of transmission of COVID-19, and new §500.44, concerning an emergency rule in response to COVID-19 on treatment planning and service provision documentation deadlines in order to provide chemical dependency treatment facilities (CDTFs) additional time to document service delivery, as counselor caseloads may have increased in intensive residential treatment programs. As authorized by Government Code §2001.034, HHSC 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 these emergency rules for CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications in Response to COVID-19 and Treatment Planning and Service Provision Documentation Deadlines in 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 emergency rules to temporarily permit a licensed CDTF to provide treatment services through two-way, real-time internet or telephone communications to clients in order to reduce the risk of transmission of COVID-19; and to extend treatment planning and service provision documentation deadlines to provide CDTFs additional time to document service delivery, as counselor caseloads may have increased in intensive residential treatment programs.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055, and Health and Safety Code §464.009. 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, §464.009 authorizes the Executive Commissioner of HHSC to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The emergency rules implement Texas Government Code Chapter 531 and Health and Safety Code Chapter 464.

§500.43. CDTF Service Delivery Through Two-Way, Real-Time Internet or Telephone Communications in Response to COVID-19.

(a) A qualified credentialed counselor, licensed professional counselor, licensed chemical dependency counselor, licensed marriage and family therapist, licensed clinical social worker, or licensed professional counselor intern may provide intensive residential services required by 25 TAC §448.903(d)(1)-(2), supportive residential services required by 25 TAC §448.903(g)(1)-(2), intensive residential services in therapeutic communities required by 25 TAC §448.1401(g)(1)-(2), and adult supportive residential services in therapeutic communities required by 25 TAC §448.1401(k)(1)-(2) using two-way, real-time internet or telephone communications to provide services.

(b) A licensed professional counselor intern may provide outpatient chemical dependency treatment program services using two-way, real-time internet or telephone communications to provide services.

(c) Notwithstanding the provisions of 25 TAC §448.911, the professionals listed in subsection (a) of this section and in §500.41(e) of this subchapter (relating to CDTF Telemedicine or Telehealth in Response to COVID-19) may use two-way, real-time internet or telephone communications to provide services.

(d) Any provision of services under this section shall comply with all applicable state and federal statutes and rules regarding record-keeping, confidentiality, and privacy, including 25 TAC §448.508, 25 TAC §448.210, and 42 Code of Federal Regulations Part 2.

§500.44. CDTF Treatment Planning and Service Provision Documentation Deadlines in Response to COVID-19.

(a) Notwithstanding the deadline provision of 25 TAC §448.804(f), the client treatment plan required by 25 TAC §448.804 shall be completed and filed in the client record within seven business days of admission.

(b) Notwithstanding the deadline provision of 25 TAC §448.804(l), program staff shall document all treatment services (counseling, chemical dependency education, and life skills training) in the client record within seven business days, including the date, nature, and duration of the contact, the signature and credentials of the person providing the service, and the information required by 25 TAC §448.804(l)(1)-(2).

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 E. LICENSED CHEMICAL DEPENDENCY COUNSELORS

26 TAC §500.51

The Executive Commissioner of the Texas 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, new §500.51, concerning an emergency rule for supervision of licensed chemical

dependency counselor (LCDC) interns in response to COVID-19 in order to permit supervisors of interns to provide required supervision through the use of two-way, real-time internet or telephone communications to reduce the risk of transmission of COVID-19. As authorized by Government Code §2001.034, HHSC 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 Supervision of LCDC Interns in 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 temporarily permit counselor interns with more than 1,000 hours of supervised work experience to provide services in person or through two-way, real-time internet or telephone communications; supervisors of LCDC interns with less than 2,000 hours of supervised work experience to provide supervision in person or through two-way, real-time internet or telephone communications; and a certified clinical supervisor, or the clinical training institution coordinator or intern's supervising qualified credentialed counselor at a clinical training institution, to provide supervision to a counselor intern using two-way, real-time internet or telephone communications to observe and document the intern performing assigned activities and to provide and document one hour of face-to-face individual or group supervision.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055, and Health and Safety Code §464.009. 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 health and human services system. Occupations Code, §504.051 authorizes the Executive Commissioner of HHSC to adopt rules as necessary for the performance of its duties under the chapter, establish standards of conduct and ethics for persons licensed under the chapter, and establish any additional criteria for peer assistance programs for chemical dependency counselors that the Executive Commissioner of HHSC determines necessary.

The emergency rule implements Texas Government Code Chapter 531 and Occupations Code Chapter 504.

§500.51. Supervision of LCDC Interns in Response to COVID-19.

(a) A counselor intern with more than 1,000 hours of supervised work experience may provide services in person or using two-way, real-time internet or telephone communications.

(b) Notwithstanding 25 TAC §140.422(c), the supervisor of a counselor intern with less than 2,000 hours of supervised work experience must be on site or immediately accessible by two-way, real-time internet or telephone communications when the intern is providing services.

(c) When supervising a counselor intern as required by 25 TAC §140.422(d), (e), (g), and (h), the certified clinical supervisor, or the clinical training institution coordinator or intern's supervising qualified credentialed counselor at a clinical training institution, may use two-way, real-time internet or telephone communications to observe and document the intern performing assigned activities and to provide and document one hour of face-to-face individual or group supervision.

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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

TWC adopts on an emergency basis amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.1

Subchapter F. Extended Benefits, §§815.170 - 815.172, and 815.174

TWC adopts the repeal of the following section of Chapter 815, relating to Unemployment Insurance, on an emergency basis:

Subchapter F. Extended Benefits, §815.173

Purpose, Background, and Authority

The Texas Workforce Commission (TWC) adopts these rules on an emergency basis in accordance with the Families First Coronavirus Response Act, Public Law (P.L.) 116 - 127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), enacted March 18, 2020, and Texas Labor Code §208.001(b) and §209.205.

EUISAA provides states with emergency funding grants for the administration of their unemployment compensation (UC) pro-

grams. The purpose of these grants is to assist states with the unprecedented claim volumes associated with COVID-19.

These grants are allocated into two separate allotments, Allotment I and II. Each allotment contains its own requirements to be fulfilled by each state. States may apply for either or both of these grants; TWC anticipates obtaining both. EUISAA requires the U.S. Department of Labor (USDOL) to transfer the grant funds to states meeting the Allotment I requirements no later than 60 days after enactment. USDOL has determined this deadline to be May 15, 2020. To meet this requirement, USDOL has determined states must submit their request for the first allotment by May 8, 2020.

Under EUISAA §4105, if a state meets the requirements of and obtains both Allotment I and II, the Federal Government will pay 100 percent of any Extended Benefits (EB), beginning on March 18, 2020 until December 31, 2020, including the first week of EB.

One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment." USDOL has stated that this notice must be individually made to the separated employee.

TWC has the authority under Texas Labor Code §208.001(b) to require this individual notice. Section 208.001(b) provides that "The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer." To clarify how this notice must be provided, TWC has determined it prudent to amend its rules to define "places accessible" to include general notice in the workplace and an individual notice upon separation.

As TWC anticipates obtaining both Allotment I and II grant funds, this will provide for 100 percent federally funded EB. Texas Labor Code §209.025 provides that "Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Currently, Texas Labor Code, Chapter 209, provides for an Insured Unemployment Rate (IUR) trigger for EB, with benefit eligibility lasting a maximum of 13 weeks. Federal law, however, provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger also provides that in periods of high unemployment, an additional seven weeks of EB benefit eligibility is available.

In order to fully maximize the receipt of fully funded federal EB anticipated by §209.025, TWC must implement the optional TUR trigger with the high unemployment rate period. To ensure that TWC maximizes the federal funding, a provision is being added to allow for additional weeks of benefit eligibility, in excess of the current seven, if provided for by federal law. Other provisions addressing coordination of benefit programs and the treatment of certain governmental and tribal employers are also addressed.

The Commission must take immediate action in order to allow for the continued payment of unemployed individuals who exhaust their regular and emergency unemployment benefits. The deadline for meeting the requirements of Allotment I is May 8, 2020. During this period of high, sustained unemployment, the 100 percent federally shared EB are vital to out-of-work Texans who are struggling to pay their bills. These benefits also serve as a much-needed stabilizing factor in local economies. Therefore, the Commission finds that imminent peril to the public welfare requires adoption of rules without 30 days' notice in the Texas Register. On the same basis, the Commission also finds that imminent peril to the public welfare requires adoption of rules with an expedited effective date that is effective immediately on filing with the Secretary of State, so that these rules can be implemented immediately under the emergency rulemaking provisions of Texas Government Code §2001.034 and §2001.036.

Explanation of Individual Provisions

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A on an emergency basis:

§815.1. Definitions

Section 815.1 is amended to add paragraph (14), which defines "places accessible" as locations in which an employer shall provide required notices to an employee as provided in the Act, Chapter 208.

New subparagraph (A) provides that "places accessible" includes notices containing the required information are to be displayed in a manner reasonably calculated to be encountered by all employees.

New subparagraph (B) provides that "places accessible" means an employer must individually provide the required notice information to an employee upon separation from employment. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided in a paper format, including by mail or with separation paperwork, email, text, or other means reasonably calculated to ensure the individual receives the required notification.

SUBCHAPTER F. EXTENDED BENEFITS

TWC adopts the following amendments to Subchapter F on an emergency basis:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger

Previously repealed section 815.170 is reinstated with modifications.

Subsection (a) provides that pursuant to §209.025, if full federal funding for EB is available, a week is a state "on" indicator week if:

-- the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

--the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

Subsection (b) states that there is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) are not satisfied.

Subsection (c) clarifies that notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

§815.171. High Unemployment Period: Maximum Tool Extended Benefit Amount

Previously repealed section 815.171 is reinstated with modifications.

Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a). If the conditions under §815.170(a) are met, and the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period exists.

Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible claimant for the claimant's eligibility period is the lesser of:

--80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;

--20 times the claimant's average weekly benefit amount; or

--46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

Subsection (c) provides that if the full federal funding for EB provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b), then that amount shall be the total extended benefit amount.

Section 815.172. Concurrent Emergency Unemployment Compensation Programs

Section 815.172 is amended to capitalize Extended Benefits.

Section 815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits

Section 815.173 is repealed.

Section 815.174. Financing of Extended Benefits

Previously repealed §815.174 is reinstated with modifications.

TWC hereby certifies that the emergency rule adoption has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

The effective date of these rules shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

If full federal funding for EB is available, the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, shall not apply; however, the provisions of §209.084, Charges to Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to apply.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1

This rule is adopted on an emergency basis pursuant to:

--Texas Government Code §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

No other statutes or rules are affected by this Emergency adoption.

§815.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

(1) Act--The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.

(2) Additional claim--A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(3) Adequate notification--A notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

(A) Notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

(B) The employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

(C) Examples of adequate notification of adverse facts include, but are not limited to, the following:

(i) The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.

(ii) The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

(D) A notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

(i) policies or procedures;

(ii) warnings;

(iii) performance reviews;

(iv) attendance records;

(v) complaints; and

(vi) witness statements.

(4) Agency--The unit of state government that is presided over by the Commission and under the direction of the executive director, which operates the integrated workforce development system and administers the unemployment compensation insurance program in this state as established under Texas Labor Code, Chapter 301. It may also be referred to as the Texas Workforce Commission.

(5) Appeal--A submission by a party requesting the Agency or the Commission to review a determination or decision that is adverse to that party. The determination or decision must be appealable and pertain to entitlement to unemployment benefits; chargeback as provided in the Act, Chapter 204, Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax coverage or contributions or reimbursements. This definition does not grant rights to a party.

(6) Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of the individual's benefit year, or any other alternate base period as allowed by the Act.

(7) Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

(8) Benefit wage credits--Wages used to determine an individual's monetary eligibility for benefits. Benefit wage credits consist of those wages an individual received for employment from an employer during the individual's base period as well as any wages ordered to be paid to an individual by a final Commission order, pursuant to its authority under Texas Labor Code, Chapter 61. Benefit wage credits awarded by a final Commission order that were due to be paid to the individual by an employer during the individual's base period shall be credited to the quarter in which the wages were originally due to be paid.

(9) Board--Local Workforce Development Board created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i) (also referred to as an LWDB).

(10) Commission--The three-member body of governance composed of Governor-appointed members in which there is one representative of labor, one representative of employers, and one representative of the public as established in Texas Labor Code §301.002, which includes the three-member governing body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings involving unemployment insurance issues regarding tax coverage, contributions or reimbursements.

(11) Day--A calendar day.

(12) Landman--An individual who is qualified to do field work in the purchasing of right-of-way and leases of mineral interests, record searches, and related real property title determinations, and who is primarily engaged in performing the field work.

(13) Person--May include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(14) Places accessible--Locations in which an employer shall provide required notices to an employee as provided in the Act, Chapter 208. This includes:

(A) Notices providing general information about filing a claim for unemployment benefits shall be displayed in a manner reasonably calculated to be encountered by all employees; and

(B) Upon separation from employment, an employer shall provide an employee individual notice of general information about filing a claim for unemployment benefits as set out in the printed notice referenced in §208.001(b) of the Act. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided:

(i) in a paper format, including by mail or with separation paperwork;

(ii) by email;

(iii) by text; or

(iv) by other means reasonably calculated to ensure the individual receives the required notification.

(15) [~~(14)~~] Reopened claim--The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, i.e., illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(16) [~~(15)~~] Week--A period of seven consecutive calendar days ending at midnight on Saturday.

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 28, 2020.

TRD-202001696
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: April 28, 2020
Expiration date: August 25, 2020
For further information, please call: (512) 689-9855

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SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §§815.170 - 815.172, 815.174

These rules are adopted on an emergency basis pursuant to:

--Texas Government Code §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

No other statutes or rules are affected by this Emergency adoption.

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

(a) Pursuant to §209.025, if full federal funding for Extended Benefits is available, [~~In addition to the state "on" indicator provisions for extended benefits in the Act, and with respect to weeks of unemployment beginning on or after February 17, 2009,~~] a week is a state "on" indicator week if:

(1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

(2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

[~~(b) With respect to compensation for weeks of unemployment beginning after the date of enactment of Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) and ending on or before the date established in federal law permitting this provision, a week is a state "on" indicator week if:~~

~~(1) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and~~

~~(2) the average rate of total unemployment in Texas (seasonally adjusted), as determined by the U.S. Secretary of Labor, for the three-month period referred to in paragraph (1) of this subsection, equals or exceeds 110 percent of such average for any or all of the corresponding three-month periods ending in the three preceding calendar years.~~

(b) [~~(c)~~] There is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) of this section are not satisfied. [~~In addition to the state "off" indicator provisions for extended benefits in the Act, there is a state "off" indicator for only a week if, for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subsection (a) or (b) of this section result in an "on" indicator.~~]

(c) Notwithstanding this section, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

[~~(d) This section continues in effect until the week ending four weeks prior to the last week of unemployment for which 100 percent federal sharing is available under P.L. 111-5, Division B, Title II, §2005(a), without regard to the extension of federal sharing for certain claims as provided under §2005(c) of such law.~~]

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

(a) If the conditions under §815.170(a) [~~or (b)~~] of this subchapter are met, and [~~except that~~] the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period shall exist.

(b) Effective with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible claimant [~~individual~~] for the claimant's [~~individual's~~] eligibility period is the lesser of: [~~80 percent of the total amount of regular benefits that were payable to the individual under the Act in the individual's benefit year.~~]

(1) 80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;

(2) 20 times the claimant's average weekly benefit amount; or

(3) 46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

(c) Pursuant to §209.025, if the full federal funding for Extended Benefits provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b) of this section, that amount shall be the total extended benefit amount. [~~This section applies as long as §815.170 of this subchapter is in effect.~~]

§815.172. Concurrent Emergency Unemployment Compensation Programs.

The Agency may pay unemployment compensation benefits under other emergency unemployment compensation programs that may be in effect prior to paying Extended Benefits [~~extended benefits~~] under this subchapter.

§815.174. Financing of Extended Benefits.

(a) Pursuant to §209.025, if full federal funding for extended benefits is available, [~~If there is 100 percent federal sharing for extended benefits pursuant to P.L. 111-5, Division B, Title II, §2005,~~] the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges [~~Subchapter E, Chapter 209 of the Act relating~~] to Taxed Employer, [~~taxed employers~~] shall not apply.

(b) The provisions of §209.084, [~~regarding~~] Charges to Governmental Employer, and §209.0845, [~~regarding~~] Charges to Indian Tribe, of the Act shall continue to apply.

[~~(c) This section applies as long as §815.170 of this subchapter is in effect.~~]

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 28, 2020.

TRD-202001697
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: April 28, 2020
Expiration date: August 25, 2020
For further information, please call: (512) 689-9855

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40 TAC §815.173

This rule is repealed on an emergency basis pursuant to:

--Texas Government Code §2001.034, which provides TWC with the authority to adopt rules on an emergency basis;

--Texas Labor Code §209.025, which provides TWC with authority to adopt rules necessary to maximize the receipt of any fully federally funded extended unemployment benefits, if full federal funding of those benefits is available;

--Texas Labor Code §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities; and

--Texas Labor Code §301.062, which provides TWC with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

No other statutes or rules are affected by this Emergency adoption.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

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 28, 2020.

TRD-202001698
Jason Vaden
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: April 28, 2020
Expiration date: August 25, 2020
For further information, please call: (512) 689-9855

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

SUBCHAPTER F. BENEFITS

DIVISION 1. BENEFITS IN GENERAL

1 TAC §372.1513

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §372.1513, concerning Availability of Monthly Benefits.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with House Bill 1218, 86th Legislature, Regular Session, 2019, which requires HHSC to distribute Supplemental Nutrition Assistance Program (SNAP) benefits across a 28-day period for new SNAP households certified on or after September 1, 2020.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §372.1513 changes the distribution schedule, making SNAP benefits available during the first 28 days of the month rather than the first 15 days. The amendment also clarifies that TANF benefits are available during the first 3 days of the month and removes the correlated SNAP and Temporary Assistance for Needy Families (TANF) distribution schedules.

FISCAL NOTE

Trey Wood, Acting Deputy Executive Commissioner for Financial Services, has determined that for the first fiscal year that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. The effect on state government for the first fiscal year that the rule will be in effect is an estimated cost of $69,904 in General Revenue (GR) ($180,868 All Funds (AF)) in fiscal year (FY) 2021. There are no anticipated costs beyond FY 2021.

Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rule will expand an existing rule;

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

(8) HHSC has insufficient information to determine the proposed rule's effect on the state's economy.

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

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

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule and does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Michelle Alletto, Chief Program and Services Officer, has determined that for each year of the first five years the rule is in effect, the public benefit will be: 1) relieving an unintended strain on retailers caused by the current schedule of SNAP benefits, and 2) the provision of a wider availability of products for SNAP recipients.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because there is no requirement to alter business practices. The proposed rule applies only to the distribution of SNAP benefits to recipients whose initial determination of eligibility for benefits are made on or after September 1, 2020.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sarah Scott at (512) 206-4641 in HHSC Access and Eligibility Services.

Written comments on the proposal may be submitted Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751, or by e-mail to AES_PSAD@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 20R028" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies and Human Resources Code §33.002(c-1), which requires the Executive Commissioner to adopt rules related to distribution of SNAP benefits.

The amendment affects Texas Government Code §531.0055 and implements Human Resources Code, §33.002(c-1).

§372.1513. Availability of Monthly Benefits.

After certifying a household for monthly benefits, the Texas Health and Human Services Commission makes:

(1) SNAP [~~the~~] benefits available during the first 28 [~~15~~] days of the month; and [~~.~~]

(2) TANF benefits available during the first 3 days of the month.[~~The specific day is determined by the last digit in the case number as follows:~~]

[~~Figure: 1 TAC §372.1513~~]

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 24, 2020.

TRD-202001615
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 206-4641

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CHAPTER 377. CHILDREN'S ADVOCACY PROGRAMS

SUBCHAPTER C. STANDARDS OF OPERATION FOR LOCAL CHILDREN'S ADVOCACY CENTERS

1 TAC §§377.201, 377.203, 377.205, 377.207, 377.209, 377.211

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §377.201, concerning Purpose and Definitions; §377.203, concerning Legal Authorization, §377.205, concerning Applicability; §377.207, concerning Contract with Statewide Children's Advocacy Center Organization; §377.209, Contracts with Local Children's Advocacy Centers; and §377.211, concerning Operation of Local Children's Advocacy Center and Program.

BACKGROUND AND PURPOSE

Children's advocacy centers (CACs) were codified in statute under the Texas Family Code §§264.401-264.411 in 1995. At that time, Children's Advocacy Centers of Texas, Inc. (CACTX) was an administrative board for 13 CACs that were in existence. Since that time, the number of CACs have grown, with 71 CACs serving 208 of 254 counties in Texas. HHSC has contracted with CACTX as the statewide organization providing children's advocacy services since fiscal year 2016. Previously, the Office of the Attorney General contracted with CACTX to provide these services.

The purpose of amending these rules is to reflect the changes Senate Bill 821 made to the Texas Family Code. Additionally, the amendments will more clearly align the rules with current practices, standards, services, and operations of the statewide children's advocacy center organization and local CACs in Texas.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §377.201(b)(3) adds a reference to the Texas Family Code §264.4031.

The proposed amendment to §377.203 deletes the reference to Texas Family Code §264.410(c) because it has been repealed and replaces it with language referencing the Texas Family Code Chapter 264, Subchapter E, as the source that authorizes HHSC to administer funding for children's advocacy centers.

The proposed amendment to §377.205 deletes language referring to contracts for services with local CACs and the reference to Texas Family Code Chapter 264, Subsection E. The language is replaced with new language to clarify that the subchapter applies to local children's advocacy centers and the statewide children's advocacy center organization.

The proposed amendments to §377.207 clarifies subsection (b) to state that HHSC contracts with one statewide children's advocacy center organization. An edit to subsection (b)(1) corrects a reference to "§501(c)(3)" of the Internal Revenue Code of 1986. Subsection (b)(2) is deleted and the paragraphs are renumbered to account for the deletion. The proposed amendment to subsection (b)(3) clarifies that HHSC contracts with one statewide children's advocacy center organization that is composed of individuals who have expertise in establishing and operating local children's advocacy centers. A new subsection (d) is added to require the statewide organization HHSC contracts with, to de-

velop and adopt standards for local children's advocacy center programs.

The proposed amendment to §377.209 adds a new subsection (a) which provides that a children's advocacy center may be established on the execution of a memorandum by community members and the participating agencies described by Texas Family Code §264.403(a) to serve a county or two or more contiguous counties in which a center has not been established, in accordance with Texas Family Code §264.402. The subsections are relabeled to account for the addition of subsection (a). New subsection (b) is amended to require that the children's advocacy center organization shall contract with local children's advocacy centers. A new subparagraph (B) is added to subsection (c)(1) to require that a local children's advocacy center must have a signed working protocol as provided by Texas Family Code §264.4031. The subparagraphs are relabeled to account for the addition. New subsection (c)(1)(C) is updated for conformity. The proposed amendment to new subsection (c)(1)(D) deletes the phrase "of persons involved in the investigation or prosecution of child abuse cases, or the delivery of services." New subparagraph (E) adds new language clarifying that for a local children's advocacy center to be eligible to contract with the statewide organization, the multidisciplinary team must convene regularly under Texas Family Code §264.406. Old subparagraphs (E), (F), and (G) are deleted. New subsection (c)(1)(F) is updated for clarity. Subsection (c)(1)(I) is deleted. A new subparagraph (G) is added to subsection (c)(1) to require that a local center will fulfill the duties required by Texas Family Code §264.405. The reference to subsection "(b)(1)" is replaced with subsection "(c)(1)" in subsection (c)(2) to align the reference with the proposed changes.

The proposed amendment to §377.211 replaces the language in paragraphs (1) - (4) in subsection (a) with new language pertaining to a local children's advocacy center's operational duties. A new subsection (b) is added listing the services a local children's advocacy center must provide. The subsections are relabeled and the title to new subsection (c) is revised. New subsection (c) is revised to clarify who comprises the local children's advocacy board. The new language clarifies that a local children's advocacy center must be governed by a board and lists who must serve on the board of a local children's advocacy center, including requiring an executive officer with decision-making authority. The board must include a law enforcement agency with jurisdiction to investigate not only child abuse but also neglect cases in the area served by the local children's advocacy center. Language referring to DFPS's Child Protective Services division was deleted and replaced with "DFPS." New paragraph (3) of this subsection provides that the required governing board members, referenced in this subsection, may not constitute a majority of the membership of a local children's advocacy center's governing board. The proposed amendment to subsection (d) revises paragraph (1) by adding a reference to the Texas Family Code §264.403(a) and updates language pertaining to who must comprise a multidisciplinary team. The language in paragraphs (2) - (5) was deleted and new paragraphs (2) - (5) provide for potential additional multidisciplinary team members and the requirements of the participating agencies to agree in writing and to sign the memorandum of understanding and the working protocol with the local children's advocacy center. The new language describes the required multidisciplinary team response involvement, provides a criterion on the abuse or neglect case that may be reviewed by a multidisciplinary team, and describes the authority a multidisciplinary team member has in sharing with and receiving information from other multidisciplinary team members. The proposed amendment to subsection (f) replaces "child" with "alleged victim" and a clerical edit is made to paragraph (2) of this subsection. New language is added to paragraph (3) of this subsection providing that a request to a local children's advocacy center for confidential information must be made to the agency with the originating information. The proposed amendments to subsection (f)(4) and (5) add language to replace "video" recording with "electronic recording." The proposed amendment also provides that a person with a disability may be interviewed and recorded electronically by a local children's advocacy center and allows DFPS access to the electronic recordings of children and of persons with a disability. The amendment adds "exploitation" as a potential civil action alleged in a civil suit or investigated by DFPS.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner of Financial Services, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing rules;

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

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

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

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not require small or micro-businesses, or rural communities to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Dee Budgewater, Deputy Executive Commissioner, Health, Developmental & Independence Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be that the 71 local CAC centers throughout Texas,

where services are offered to children that are victims of abuse, will operate under defined, clear, and consistent duties and working protocols. Additionally, the rules will align with current practices and the revised Texas Family Code.

Liz Prado has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules codifies existing HHSC business practices and standards for the statewide children's advocacy center organization, and local CACs currently in statute.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 20R017" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Family Code §264.409, which directs HHSC to contract with a statewide organization for the administration and oversight of child advocacy centers statewide.

The amendments affect Texas Government Code §531.0055.

§377.201. Purpose and Definitions.

(a) The purpose of this subchapter is to provide:

(1) requirements regarding the function and administration of a local children's advocacy center program; and

(2) requirements for contracts between the statewide children's advocacy center organization and the local children's advocacy centers.

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

(1) Local children's advocacy center--An entity that is established in accordance with a memorandum of understanding executed under Texas Family Code §264.403, that operates local children's advocacy center programs.

(2) Local children's advocacy center program--A local program that:

(A) assesses victims of child abuse or neglect to determine needed services and provides the needed services;

(B) provides a facility at which a multidisciplinary team can meet to facilitate the disposition of child abuse cases; and

(C) coordinates the activities of governmental entities in relation to child abuse investigations and the delivery of services.

(3) Multidisciplinary team--A team of individuals composed in accordance with Texas Family Code §264.406 that works within a local children's advocacy center in accordance with the protocols outlined in Texas Family Code §264.4031 to review child abuse cases with the intent of coordinating the activities of entities involved in child abuse investigation and prosecution and in the provision of victim services.

(4) Statewide children's advocacy center organization--The entity with which HHSC contracts under Texas Family Code §264.409 and §377.207 of this subchapter (relating to Contract with Statewide Children's Advocacy Center Organization).

§377.203. Legal Authorization.

The provisions of this subchapter are promulgated under [~~the~~] Texas Family Code Chapter 264, Subchapter E, [~~§264.410(c),~~] which authorizes HHSC toadminister funding for children's advocacy centers [~~adopt standards for local children's advocacy center programs and to adopt rules necessary to carry out the provisions of Texas Family Code Chapter 264, Subchapter E~~].

§377.205. Applicability.

This subchapter applies to local children's advocacy centers and the statewide children's advocacy center organization [~~contracts for services with local children's advocacy centers, as specified in Texas Family Code Chapter 264, Subchapter E~~].

§377.207. Contract with Statewide Children's Advocacy Center Organization.

(a) HHSC contracts with a single statewide children's advocacy center organization that satisfies subsection (b) of this section to perform the following functions for local children's advocacy center programs:

(1) training;

(2) technical assistance;

(3) evaluation services; and

(4) funds administration.

(b) HHSC contracts [~~may contract only~~] with one [a] statewide children's advocacy center organization that:

(1) is exempt from federal income taxation under Internal Revenue Code of 1986 §501(a) and §501(c)(3) [~~§501(3)~~]; and

[~~(2) is designated as a supporting organization under Internal Revenue Code of 1986 §509(a)(3); and~~]

(2) [~~(3)~~] is composed of individuals [~~or groups of individuals~~] who have expertise in establishing and operating local children's advocacy centers [~~center programs~~].

(c) The contract must limit the statewide children's advocacy center organization's annual spending for the performance of obligations under Texas Family Code §264.409(a) to no more than 12 percent of the annual amount appropriated to HHSC for the purposes of the local children's advocacy center programs.

(d) The statewide organization with which HHSC contracts shall develop and adopt standards for local children's advocacy centers.

§377.209. Contracts with Local Children's Advocacy Centers.

(a) On the execution of a memorandum of understanding under Texas Family Code §264.403, a local children's advocacy center may be established by community members and the participating agencies described by Texas Family Code §264.403(a) to serve a county or two or more contiguous counties in which a center has not been established, in accordance with Texas Family Code §264.402.

(b) [~~(a)~~] The statewide children's advocacy center organization with which HHSC contracts under §377.207 of this subchapter (relating to Contract with Statewide Children's Advocacy Center Organization) shall contract [~~contracts~~] with local children's advocacy centers to establish, maintain, and enhance the services provided by the centers.

(c) [~~(b)~~] Eligibility of a Local Children's Advocacy Center to Contract with the Statewide Organization.

(1) To be eligible to contract with the statewide organization under Texas Family Code §264.410, a local children's advocacy center must:

(A) have a signed memorandum of understanding as provided by Texas Family Code §264.403;

(B) have a signed working protocol as provided by Texas Family Code §264.4031;

(C) [~~(B)~~] have [~~operate under the authority of~~] a governing board as provided by Texas Family Code §264.404;

(D) [~~(C)~~] have a multidisciplinary team [~~of persons involved in the investigation or prosecution of child abuse cases, or the delivery of services~~] as provided by Texas Family Code §264.406;

(E) [~~(D) hold~~] regularly convene the multidisciplinary team [~~scheduled case reviews~~] as provided by Texas Family Code §264.406;

[~~(E) operate in a neutral and physically separate space from the day-to-day operations of any public agency partner;~~]

[~~(F) have developed a method of statistical information-gathering on children receiving services through the center, and share such statistical information with the statewide children's advocacy center organization, DFPS, and HHSC when requested;~~]

[~~(G) have an in-house volunteer program;~~]

(F) [~~(H)~~] employ an executive director who is accountable [~~answerable~~] to the board of directors of the local children's advocacy center and who is not the exclusive salaried employee of any governmental [~~public~~] agency [~~partner~~]; and

[~~(I) operate under a working protocol that includes a statement of:~~]

~~(i)~~ ~~the local children's advocacy center's mission;~~]

~~(ii)~~ ~~each participating agency's role and commitment to the local children's advocacy center;~~]

~~(iii)~~ ~~the type of cases to be handled by the local children's advocacy center;~~]

~~(iv)~~ ~~the local children's advocacy center's procedure for conducting case reviews and forensic interviews, and for ensuring access to specialized medical and mental health services; and~~]

~~(v)~~ ~~the local children's advocacy center's policies regarding confidentiality and conflict resolution.~~]

(G) fulfill the duties required by Texas Family Code §264.405.

(2) The statewide children's advocacy center organization may waive requirements specified in subsection (c)(1) [~~(b)(1)~~] of this section if it determines that the waiver will not adversely affect a [~~the~~] local children's advocacy center's ability to carry out its duties under Texas Family Code §264.405.

(d) [~~(c)~~] Requirements for Contracts Awarded to Local Children's Advocacy Centers by the Statewide Children's Advocacy Center Organization.

(1) A contract between the statewide children's advocacy center organization and a local children's advocacy center under Texas Family Code §264.410 must not result in reducing the financial support the local children's advocacy center receives from another source.

(2) A contract between the statewide children's advocacy center organization and a local children's advocacy center under Texas Family Code §264.410 must be enforced through the use of remedies and in accordance with the procedures provided in the Uniform Grant Management Standards for Texas (UGMS).

(3) A contract between the statewide children's advocacy center organization and a local children's advocacy center under Texas Family Code §264.410 must require the local children's advocacy center to comply with the requirements and provisions applicable to local children's advocacy centers contained in the contract between the statewide children's advocacy center organization and HHSC under Texas Family Code §264.409.

§377.211. Operation of Local Children's Advocacy Center and Program.

(a) A local children's advocacy center must:

(1) receive, review, and track Department of Family and Protective Services (DFPS) reports relating to the suspected abuse or neglect of a child or the death of a child from abuse or neglect to ensure a consistent, comprehensive approach to all cases that meet the criteria outlined in the multidisciplinary team working protocol adopted under Texas Family Code §264.4031;

(2) coordinate the activities of participating agencies relating to abuse and neglect investigations and delivery of services to alleged abuse and neglect victims and their families;

(3) facilitate assessment of alleged abuse or neglect victims and their families to determine their need for services relating to the investigation of abuse or neglect and provide needed services; and

(4) comply with the standards adopted under Texas Family Code §264.409(c).

[~~(1) assess victims of child abuse and their families to determine their need for services relating to the investigation of child abuse;~~]

[~~(2) provide the services needed;~~]

[~~(3) provide a facility at which a multidisciplinary team appointed under Texas Family Code §264.406 can meet to facilitate the efficient and appropriate disposition of child abuse cases through the civil and criminal justice systems; and~~]

[~~(4) coordinate the activities of governmental entities that are involved with child abuse investigations and the delivery of services to child abuse victims and their families.~~]

(b) A local children's advocacy center must provide:

(1) facilitation of a multidisciplinary team response to abuse or neglect allegations in accordance with Texas Family Code §264.4061;

(2) a formal process that requires the multidisciplinary team to routinely discuss and share information regarding investigations, case status, and services needed by children and families;

(3) a system to monitor the progress and track the outcome of each case;

(4) a child-focused setting that is comfortable, private, and physically and psychologically safe for diverse populations at which a multidisciplinary team can meet to facilitate the efficient and appropriate disposition of abuse and neglect cases through the civil and criminal justice systems;

(5) culturally competent services for children and families throughout the duration of a case;

(6) victim support and advocacy services for children and families;

(7) forensic interviews that are conducted in a neutral, fact-finding manner and coordinated to avoid duplicative interviewing;

(8) access to specialized medical evaluations and treatment services for victims of alleged abuse or neglect;

(9) evidence-based, trauma-focused mental health services for children and nonoffending members of the child's family; and

(10) opportunities for community involvement through a formalized volunteer program dedicated to supporting the local children's advocacy center.

(c) [~~(b)~~] Governing Board [~~of Directors~~] of a Local Children's Advocacy Center.

(1) A local children's advocacy center must be governed by a board [~~of directors~~]. In addition to any other persons appointed or elected to serve on the governing board of a local children's advocacy center [~~of directors~~], the governing board [~~of directors~~] must include an executive officer of, or an employee with decision-making authority selected by an executive officer of [~~each of the following~~]:

(A) DFPS;

(B) [~~(A)~~] a law enforcement agency with jurisdiction to investigate [~~that investigates~~] child abuse and neglect in the area served by the local children's advocacy center; and

[~~(B) DFPS's Child Protective Services division; and~~]

(C) the county or district attorney's office with jurisdiction to prosecute [~~involved in the prosecution of~~] child abuse and neglect cases in the area served by the local children's advocacy center.

(2) Service on the board of a local children's advocacy center by an executive [~~a public~~] officer or employee, under paragraph (1) of this subsection, is an additional duty of the person's office or employment.

(3) The governing board members required under paragraph (1) of this subsection may not constitute a majority of the membership of a local children's advocacy center's governing board.

(d) [~~(c)~~] Multidisciplinary Team of a Local Children's Advocacy Center.

(1) A local children's advocacy center's multidisciplinary team must include employees of the participating agencies described by Texas Family Code §264.403(a) [~~, who are professionals involved in the investigation or prosecution of child abuse cases~~] .

(2) A representative of any other entity may participate in the multidisciplinary team response as provided by the multidisciplinary team working protocol adopted under Texas Family Code §264.4031 if:

(A) the entity participates in or provides the following:

(i) child abuse or neglect investigations;

(ii) abuse or neglect investigations involving persons with a disability;

(iii) services to alleged child abuse or neglect victims; or

(iv) services to alleged victims who are persons with a disability;

(B) the local children's advocacy center and participating agencies agree in writing to the entity's participation; and

(C) the entity signs the memorandum of understating executed under Texas Family Code §264.403 and the working protocol adopted under Texas Family Code §264.4031.

(3) A local children's advocacy center's multidisciplinary team shall be actively involved in the following multidisciplinary team response:

(A) coordinating the actions of the participating agencies involved in the investigation and prosecution of cases and the delivery of services to alleged abuse or neglect victims and the victims' families; and

(B) conducting at regularly scheduled intervals multidisciplinary review of appropriate abuse or neglect cases as provided by the working protocol adopted under Texas Family Code §264.4031.

(4) A multidisciplinary team may review an abuse or neglect case in which the alleged perpetrator is not a person responsible for a child's care, custody, or welfare.

(5) A multidisciplinary team member is authorized to share with and receive from other multidisciplinary team members information made confidential by Texas Government Code Chapter 552, Texas Human Resources Code §40.005 or §48.101, or Texas Family Code §261.201 or §264.408 when acting in the member's official capacity as an employee of a participating agency described by Texas Family Code §264.403(a) or of another entity described by Texas Family Code 264.406(b).

[~~(2) A local children's advocacy center's multidisciplinary team may also include professionals involved in the delivery of services, including medical and mental health services, to child abuse victims and the victims' families.~~]

[~~(3) A multidisciplinary team must meet at regularly scheduled intervals to:~~]

[~~(A) review child abuse cases determined to be appropriate for review by the multidisciplinary team; and~~]

[~~(B) coordinate the actions of the entities involved in the investigation and prosecution of the cases and the delivery of services to the child abuse victims and the victims' families.~~]

[~~(4) A multidisciplinary team may review a child abuse case in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare or care.~~]

[~~(5) When acting in the member's official capacity, a multidisciplinary team member is authorized to receive information made confidential by Texas Human Resources Code §40.005 or Texas Family Code §261.201 or §264.408.~~]

(e) [~~(d)~~] Liability.

(1) A person is not liable for civil damages based on a recommendation made or an opinion rendered in good faith, while acting in the official scope of the person's duties as a member of a multidisciplinary team or as a board member, staff member, or volunteer of a local children's advocacy center.

(2) This limitation on civil liability does not apply if a person's actions constitute gross negligence.

(f) [~~(e)~~] Confidentiality Requirements Placed on a Local Children's Advocacy Center.

(1) In accordance with Texas Family Code §264.408, the files, reports, records, communications, and working papers used or developed in providing services under Texas Family Code Chapter 264 are confidential. This information is not subject to public release under Texas Government Code Chapter 552[~~,~~] and may be disclosed only for purposes consistent with Texas Family Code Chapter 264 without losing its confidential character. Disclosure may be made to:

(A) DFPS, DFPS employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state or local agencies that provide services to children and families; and

(B) the attorney for the alleged victim [~~child~~] who is the subject of the records[~~,~~] and a court-appointed volunteer advocate appointed for the alleged victim [~~child~~] under Texas Family Code §107.031.

(2) Information related to the investigation of a report of abuse or neglect under Texas Family Code Chapter 261, and to the services provided as a result of the investigation, are confidential as provided by Texas Family Code §261.201.

(3) DFPS, a law enforcement agency, and a prosecuting attorney may share with a local children's advocacy center information that is confidential under Texas Family Code §261.201 as needed[~~,~~] to provide services under Texas Family Code Chapter 264. Confidential information shared with or provided to a local children's advocacy center remains the confidential property of the agency that shared or provided the information to the local children's advocacy center. A request for confidential information provided to the local children's advocacy center under Texas Family Code §264.408 must be made to the agency that shared or provided the information.

(4) An electronic [~~A video~~] recording of an interview with [~~of~~] a child or person with a disability that is made by a local children's advocacy center is the property of the prosecuting attorney involved in the criminal prosecution of the case involving the child or person with a disability. If no criminal prosecution occurs, the electronic [~~video~~] recording is the property of the attorney involved in representing DFPS in a civil action alleging [~~child~~] abuse, [~~or~~] neglect, or exploitation. If the matter involving the child or person with a disability is not prosecuted [~~pursued either civilly or criminally~~], the electronic [~~video~~] recording is the property of DFPS, if the matter is an investigation by DFPS of abuse, [~~or~~] neglect, or exploitation. If DFPS is not investigating or has not investigated the matter, the electronic [~~video~~] recording is the property of the agency that referred the matter to the local children's advocacy center.

(5) DFPS must be allowed access to a local children's advocacy center's electronic recordings of [~~video-recorded~~] interviews of children or persons with a disability.

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 24, 2020.

TRD-202001591
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 206-4647

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS
SUBCHAPTER A. REGIONAL HISTORICAL RESOURCE DEPOSITORIES AND REGIONAL RESEARCH CENTERS

13 TAC §§7.1, 7.7, 7.10

The Texas State Library and Archives Commission (commission) proposes amendments to §7.1, Definitions and §7.7, Title to Materials, and new §7.10, Application for Transfer of Title to Local Historical Resources.

BACKGROUND. Following its review of the commission, the Sunset Advisory Commission adopted Recommendation 2.4 in its Staff Report with Final Results, 2018-2019, 86th Legislature. This recommendation was for a statutory change, removing the requirement that the commission always retain legal ownership of local records stored in Regional Historical Resource Depositories (depositories). Instead, Sunset recommended a statutory change authorizing the commission to approve requests by depositories who want legal custody of the records they store if the transfer is in the best interests of the state. Sunset directed the commission to work with depositories to develop rules outlining standards and an application process by September 1, 2020.

The commission's Sunset Bill, House Bill 1962, 86th Legislative Session (2019), included an amendment to Government Code, §441.153. New subsection (g) authorizes a depository to apply to the commission for title to local historical resources placed in the depository by the commission. The statute further requires the commission, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories. The statute does not authorize the commission to transfer title to state historical resources and authorizes the commission to approve an application only if the transfer of title is in the state's best interest.

On March 12, 2020, the commission forwarded drafts of proposed rules to implement Government Code, §441.153(g) and a draft application to the depositories and invited the depositories to participate in a conference call to discuss the drafts. On March 17, 2020, commission staff participated in a conference call with representatives from six depositories. In general, the depositories agreed with the commission's approach. Commission staff addressed questions raised by the depositories and made an additional clarifying edit to the proposed rules following the discussion. Commission staff also invited depositories to submit additional comments by email through close of business

on March 19, 2020. The commission did not receive any further comments.

SUMMARY. The proposed amendment to §7.1 adds a definition of "local historical resources." This definition is necessary because the statute refers to "local historical resources" and "state historical resources," but only defines "historical resources." The newly added definition clarifies that when "local historical resources" is used in proposed §7.10, it refers to local government records as defined by the Local Government Code and to other items of historical interest or value to a specific region transferred to the custody of and accepted by the commission.

The proposed amendment to §7.7 references proposed new §7.10 and clarifies that title to materials given, donated, or transferred to the commission but placed in a depository remains with the commission except as authorized by the new rule.

Proposed new §7.10 establishes the application procedure and standards for approval of a request.

Proposed subsection (a) is the statement authorizing a depository to request the transfer and provides that the commission will approve the transfer only if it is in the best interest of the state, as required by statute.

Proposed subsection (b) requires a depository who wishes to transfer title to local historical resources to apply using a form provided by the commission. The form must be filled out completely and signed by an authorized representative of the depository's institution.

Proposed subsection (c) clarifies that a depository may only apply for transfer of title to local historical resources currently held by the depository for which the commission has accession documentation. This requirement will ensure the commission has authority to approve the legal transfer. This subsection also clarifies that a depository may not apply for transfer of historical resources unless they are local historical resources. The subsection also specifies that a depository may not apply for transfer of records of local governments not currently held by the depository on behalf of the commission. Lastly, the subsection specifies that a depository must request transfer of all historical resources in one application. This requirement will minimize confusion regarding the records for researchers and ensure the administrative burden of managing records does not increase due to a piecemeal approach.

Proposed subsection (d) provides that the State Archivist will review applications and notify the depository whether the application is approved or denied within 30 days of receipt, or notify the depository of a new date if the State Archivist is unable to make a determination within 30 days. This subsection would also allow an applicant to appeal a denial of a transfer request to the director and librarian, whose decision is final.

Proposed subsection (e) requires approved applicants to continue to meet the requirements of §7.3, Minimum Requirements for Depositories, for local historical resources transferred to the depository under this section. This requirement would ensure the local historical resources are preserved according to established archival standards. The commission recognizes it has no authority to enforce this requirement once title to local historical records has transferred; however, this requirement remains in effect for a depository to continue as a depository under Government Code, §441.153, and reflects generally accepted standards. As such, this requirement should not place a new burden on a depository.

Proposed subsection (f) provides examples of when a request may not be approved, including (1) when the request is for a state historical resource, (2) the request is for a resource not currently held by the depository, (3) the application is not signed, (4) the depository is unable to demonstrate the record was transferred to the depository by the commission, (5) the depository is not in compliance with §7.3 (relating to Minimum Requirements for Depositories), and (6) the transfer is not in the best interest of the state.

FISCAL IMPACT. Jelain Chubb, State Archivist, has determined that for each of the first five years the proposed amendment and new rule are in effect, there could be a minimal increase in costs to the state as a result of enforcing or administering these rules, as proposed. Should records be transferred to a depository under the rules, as proposed, commission staff will need to document the legal transfer in collections records and existing research tools. Ms. Chubb does not anticipate a fiscal impact to local governments as a result of enforcing or administering these rules, as proposed. The option to request transfer of title is at the discretion of a depository and pertains to records already in the depository's physical custody.

PUBLIC BENEFIT AND COSTS. Ms. Chubb has determined that for each of the first five years the proposed amendment and new rules are in effect, the anticipated public benefit will be an increase in the ability of depositories to preserve, grow, and increase access to the local records collections already in their care. There are no anticipated economic costs to persons required to comply with the proposed amendment and new rule because the decision to request transfer of title is discretionary for each depository.

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed rules do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Texas Gov't Code §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed rules will be in effect, the commission has determined the following:

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

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

3. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed rules will not require an increase or decrease in fees paid to the commission;

5. The proposed rules will create a new regulation as authorized by Government Code, §441.153(g);

6. The proposed rules will not expand, limit, or repeal an existing regulation;

7. The proposed rules will not increase the number of individuals subject to the proposed rules' applicability; and

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

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action. Therefore, the proposed rules do not constitute a taking under Texas Gov't Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendment and new rule may be submitted to Jelain Chubb, State Archivist, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. The amendment and new rule are proposed under Government Code, §441.153(g), which requires the commission, in consultation with depositories, to adopt rules providing an application procedure and standards for evaluating applications to transfer title to local historical resources to depositories.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441, Subchapter J.

§7.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas State Library and Archives Commission.

(2) Depository--A regional historical resource depository established under the Government Code, §441.153.

(3) Historical resources--Books, publications, newspapers, manuscripts, papers, documents, memoranda, records, maps, artworks, photographs, microfilm, sound recordings, or other material of historical interest or value, to which title and custody have been transferred to and accepted by the Texas State Library and Archives Commission, including local government records of permanent value transferred to the custody of the commission under the Local Government Code, Title 6, Subtitle C.

(4) Local historical resources--Local government records of permanent value as defined in Subtitle C, Title 6, Local Government Code, Title 6, and any books, publications, newspapers, manuscripts, papers, documents, memoranda, records, maps, artworks, photographs, microfilm, sound recordings, or other material of historical interest or value to a specific region transferred to the custody of and accepted by the commission.

(5) [~~(4)~~] Regional research center--A regional research center established under the Government Code, §441.154.

§7.7. Title to Materials.

(a) In accordance with state statutes concerning public records, to guarantee continuity of responsibility for the materials transferred to the commission, and to provide statewide uniformity in their administration, title to all materials given, donated, or transferred to the commission and placed in a depository shall reside in the commission, except as provided by §7.10 of this subchapter (relating to Application for Transfer of Title to Local Historical Resources).

(b) Historical resources may be accessioned, and accessions negotiated, only by commission staff members. However, depository staff may, on request and authorization of the commission, physically transport to a depository historical resources which have previously been accepted by commission staff.

§7.10. Application for Transfer of Title to Local Historical Resources.

(a) In accordance with Government Code, §441.153(g), a depository may apply to the commission to transfer to the depository title to local historical resources placed in the depository by the commission. The commission shall approve the application only if the transfer of title is in the state's best interest.

(b) To initiate transfer of title to a local historical resource, a depository must submit an application to the State Archivist on the form provided by the commission. The applicant must include all requested information on the application form. The form must be signed by an authorized representative of the depository's institution.

(c) A depository may only apply for transfer of title to local historical resources currently held by the depository for which the commission has accession documentation. A depository may not apply for transfer of any other historical resources. A depository may not apply for transfer of any records of local governments not currently held by the depository on behalf of the commission. A depository must request transfer of all local historical resources in one application.

(d) The State Archivist will review applications and notify the depository whether the application is approved or denied within 30 days of receipt. If the State Archivist is unable to make a determination within 30 days, the State Archivist will notify the depository and provide a new date by which the review will be completed. If a request is denied, the applicant may appeal the decision to the director and librarian. The decision of the director and librarian may not be appealed.

(e) Approved applicants must continue to meet the requirements of §7.3 of this subchapter (relating to Minimum Requirements for Depositories) for local historical resources transferred to the depository under this section.

(f) An application will not be approved if:

(1) the request is for transfer of title of a state historical resource;

(2) the request is for transfer of title of a local historical resource not currently held by the depository;

(3) the application is not signed;

(4) the depository cannot demonstrate the resource was placed in the depository by the commission;

(5) the depository is not in compliance with §7.3 of this subchapter; or

(6) the transfer is not in the best interest of the state.

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 24, 2020.

TRD-202001658
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 463-5591

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.1 and §84.2; Subchapter C, §§84.40 - 84.42 and §§84.44 - 84.46; Subchapter D, §84.51 and §84.52; Subchapter E, §§84.60, 84.62, and 84.64; Subchapter F, §84.70 and §84.72; Subchapter G, §§84.80 - 84.82 and 84.84; Subchapter H, §84.90; Subchapter J, §84.200; Subchapter K, §§84.300 - 84.302; Subchapter M, §§84.500 - 84.506; and Subchapter N, §84.600; proposes new rules at Subchapter C, §84.43; Subchapter G, §84.85; Subchapter I, §84.103; Subchapter M, §84.507; and Subchapter N, §84.601; and repeals existing rules at Subchapter C, §84.43; and Subchapter N, §84.601 regarding the Driver Education and Safety Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Occupations Code, Chapter 1001, relating to Driver Education and Safety (DES).

The proposed rules are necessary to implement three separate rulemaking initiatives: (1) implementation of HB 2847, Article 2, 86th Legislature, Regular Session (2019); (2) addressing the need to update course curriculum requirements to complete the second phase of the Department's reorganization and clarification of the rules following the transfer of the DES program to the Department; and (3) implementing recommendations of the DES Fees Workgroup pertaining to reducing program fees. These three categories of rule changes have been combined into one proposal to eliminate the need for separate rulemakings.

HB 2847

HB 2847 amends Education Code, Chapter 1001, primarily to: (1) simplify provisions related to the eligibility requirements for, and authorized the scope of instruction for a driver education instructor acting as a teaching assistant, as a driver education teacher or as a supervising teacher and remove the need for other related license types; and (2) redefine a driver education school so that there is no requirement for a physical location to be eligible for a driver education school license.

The proposed rules implement HB 2847 by: (1) simplifying the requirements for initial licensing for driver education instructors; (2) removing the "brick and mortar" facility requirement for licensure of driver education schools; (3) removing the need for teaching assistant-full and supervising teaching assistant-full driver instructor license types; (4) removing the "teacher of record" designation to allow driver education school owners more flexibility to administer student documentation; and (5) clarifying the roles and responsibilities of driver education instructors in administering the course materials to students.

Course Curriculum

The proposed rules amend 16 TAC, Chapter 84, Subchapters M and N, to complete the second phase of the Department's planned reorganization and clarification of the rules related to course curriculum. The Texas Legislature enacted HB 1786, 84th Legislature, Regular Session (2015), which transferred the DES program from the Texas Department of Public Safety and the Texas Education Agency to the Department. On September 1, 2015, the Department transferred the DES rules from Title 19 and Title 37, and placed the same rule content into 16 TAC, Chapter 84. The Department planned to subsequently reorganize and clarify the rules within Chapter 84 via two phases of rulemakings, the first phase pertaining to licensing and regulatory functions and the second phase pertaining to course curriculum requirements.

The proposed text of the rules for the first phase was published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8388). During the public comment period, the Department received 64 comments, 33 of which addressed rules that were planned to be considered during the second phase. The adoption of the first phase rules was published in the March 24, 2017, issue of the *Texas Register* (42 TexReg 1404).

The proposed course curriculum rules for the second phase of this rulemaking were initially presented to and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on November 7, 2018. The Committee was informed by Department staff that the proposed curriculum rules would be posted for public viewing and comment on the Department's website on November 13, 2018. The comment period closed on December 12, 2018. The Department received 20 comments. No changes were made to the rules as a result of those comments.

The Curriculum Rules Workgroup (Curriculum Workgroup) conducted six meetings to address the second phase of the rulemaking and consider the comments made during the first phase that pertained to course curriculum requirements and whether the proposed rules were affected by any of the comments. The Curriculum Workgroup considered and addressed the following comments made in the first phase of the 2016 rulemaking, that were reserved for consideration in the second phase, during its meetings to determine its recommendations for the proposed rules.

2016 Comments

The Curriculum Workgroup considered comments received specifically related to §84.44 regarding the requirements for a "teacher of record" and whether a Teaching Assistant-Full (TA-Full) or Supervising Teaching Assistant-Full (Supervising TA-Full) should be able to endorse a student's final classroom records. The Curriculum Workgroup, acknowledging the comments and the passage of HB 2847 which, in part, removed the Teaching Assistant-Full and Supervising Teaching Assistant-Full license types, recommended a change to the proposed rules deleting all references to "teacher of record" and the two aforementioned license types.

The Curriculum Workgroup considered a comment received requesting the Department implement by rule §1001.111, Texas

Education Code, Driving Safety Course for Driver Younger than 25 Years of Age (DSY25), and recommended the addition of new §84.507 to the proposed rules to create a course of instruction for such students and establish licensing standards and eligibility requirements for instructors teaching the driving safety course. The Curriculum Workgroup also recommended changes to §84.64 of the proposed rules applicable to the DSY25 Course and its instructors.

The Curriculum Workgroup considered a comment received requesting clarification of the roles of an Instructor Development Course Driving Safety Instructor Trainer and a Driving Safety Instructor Trainer and recommended the changes in the proposed rules in amended §84.64(c)(4)(A) and (c)(5)(A) that clarify and expand the eligibility requirements for the two license types.

The Curriculum Workgroup considered a comment received related to §84.44(d)(1)(A) that proposed an entity other than an approved driver education school be allowed to offer continuing education for driver education (DE) instructors, and recommended a change at §84.44(d)(1)(B)(v) and (vi) to the proposed rules that allows DE instructors to obtain continuing education credit from successful completion of a Drug Offender Education Program or an eight hour school bus driver recertification program.

The Curriculum Workgroup considered comments received requesting amendment to the requirement in §84.81(a)(3)(B)(ix) that only a "teacher of record" could sign completed student classroom records where the course of instruction was taught by either a TA-Full or a Supervising TA-Full. The Curriculum Workgroup recommended that the proposed rules remove the references to the TA-Full and Supervising TA-Full license types and "teacher of record" in line with the comments and HB 2847. The Curriculum Workgroup also recommended that the proposed rules amend §84.81(a)(3)(B)(viii) to allow a school owner, supervising teacher or driver education teacher to sign or stamp completed student classroom records.

The Curriculum Workgroup considered a comment requesting the deletion of §84.500(b)(1)(T), which required an instructor to complete a DPS Form DL-42 upon a student's failure to complete required classroom instruction and recommended including the requested change to the proposed rules as the form no longer is in use with the Texas Department of Public Safety.

The Curriculum Workgroup considered comments received requesting the Department adjust the minimum times in driver education course topics in §84.500(b)(2)(A)(iii), and in driving safety course topics in §84.502(a)(1)(D), to maximize flexibility to meet educational objectives. The Curriculum Workgroup recommended the proposed rules amend those sections to change the minimum course content time allowances to permit licensees to tailor delivery of educational material to address technological advances, implement legislative changes, and the respective needs of the student and business operations. The Curriculum Workgroup also recommended that the proposed rules amend the current minimum course content times for specialized driving safety courses in §84.503(a)(1)(D).

The Curriculum Workgroup considered a comment received requesting amendment of §§84.500(b)(2)(B)(xii), 84.504(l), and 84.506(l) to allow for increased technical assistance and access to the instructor for online driver training courses, and the Curriculum Workgroup recommended the proposed rules be amended in those rule sections consistent with the comments.

Highlights of the curriculum changes include: (1) new definitions for Instructor Development Course and Instructor Development Programs relating to the certification of driver training instructors; (2) removing the "teacher of record" designation to allow school owners more flexibility to administer student documentation; (3) clarifying the roles and responsibilities of driver education instructors in administering the course materials to students; (4) expanding opportunities for instructors in obtaining continuing education credit; (5) easing requirements on driver education school student progress reporting, recordkeeping and provision of information to consumers on filing complaints with the Department; (6) creating new §84.85 that requires licensees to file a Statement of Assurance to confirm updates to driver training course materials to reflect amendments to applicable law; (7) creating new §84.103 which authorizes the Department to conduct audits of Alternative Method of Instruction (AMI) Driver Education Schools; (8) requiring Parent Taught Driver Education Course Providers and Online Driver Training Schools to provide course identification information to consumers on their websites; (9) establishing a DSY25 Course and Instructor requirements for the course, pursuant to Texas Education Code §1001.111; (10) easing advertising restrictions on new driver training schools, and drug and alcohol awareness schools pending licensure; (11) reducing the number of validation questions and expanding time to provide answers for courses developed by online providers; (12) modifying the minimum course content time for curriculum to allow licensees to tailor delivery of educational material to address technological advances, legislative changes, and the respective needs of the student and business operations; and (13) increasing access for students to technical assistance for online driver training courses.

Fees

Recommendations from Department staff to lower program fees (hereinafter referred to as "first draft fee changes") were reviewed and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on May 9, 2018. The Committee recommended that the first draft fee changes be published in the *Texas Register* for public comment, and they were published in its July 13, 2018, issue (43 TexReg 4624). The Department received 14 comments during the 30-day public comment period. The first draft fee changes and the public comments were reviewed and discussed by the Committee at its August 29, 2018, meeting, and the Committee made no changes to the first draft fee changes as a result of the comments. The Committee, however, reviewed and discussed concerns related to the first draft fee changes and voted to recommend postponement of their adoption to allow for further consideration by the Fees Workgroup. The Fees Workgroup subsequently met on October 2, 2018, and October 22, 2018, to revise the first draft fee changes. Those revisions are hereinafter referred to as the "second draft fee changes."

The second draft fee changes were reviewed and discussed at the Committee's November 7, 2018, meeting. Department staff proposed to the Committee that the second draft fee changes be published for 30 days of public comment and brought back to the Committee for discussion and recommendation. The Department filed a withdrawal of the first draft fee changes on November 9, 2018, for additional fiscal analysis and further review by the Fees Workgroup and the Committee. The withdrawal of the first draft fee changes was published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7665). The Fees Workgroup completed its fiscal analysis and made further revisions to the second draft fee changes. The second draft fee changes were considered by the Fees Workgroup on February 13, 2019, and October 24, 2019, and no further revisions were noted.

The proposed rules contain the final recommendations by the Fees Workgroup to reduce fees for driver education schools and courses; driving safety schools, course providers and courses; and Drug and Alcohol Driving Awareness schools, programs, and instructors. The proposed rules represent an average 42.6% reduction in previous fee levels for the affected license types.

The proposed rules resulted in extensive amendments to existing Subchapter C, §84.43, Driver Education Certificates, and Subchapter N, §84.601, Procedures for Student Certification and Transfers. Thus, the proposed rules repeal the existing rule sections and propose new Subchapter C, §84.43, and Subchapter N, §84.601 to provide greater clarity.

The proposed rules were presented to and discussed by the Driver Training and Traffic Safety Advisory Committee (Committee) at its meeting on December 18, 2019. A quorum of the Committee's members was not present. Department Staff, in discussion with the Advisory Committee members present, (1) modified the definitions associated to the ADE-1317 and DE-964 driver education certificates in Sections 84.2(1) and (11), to include language previously contained in Section 84.43, and to more fully describe the contents and disposition of the documentation; (2) amended the responsibilities and duties related to instructor development courses between the driver education instructors as noted in Sections 84.44(b) and 84.500(c)(5); (3) inserted the word "certified" to describe driver education instructors in Section 84.43(d) and retained the same term in Section 84.600(a) associated with exempt educational entities; and (4) corrected grammatical errors.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §84.1, Authority, by correcting the order of the statutory chapter citations to Chapters 29 and 1001, Texas Education Code.

The proposed rules amend §84.2, Definitions, to: (1) add definitions for "Instructor Development Course (IDC)," "Instructor Development Program (IDP)," "Driving Safety Course for Driver Younger than 25 Years of Age" (DSY25) and "Teaching Techniques;" (2) supplement and clarify the definitions for "ADE-1317" and "DE-964" driver education certificates; (3) remove the definition for "teacher of record;" and (4) renumber subsections accordingly.

The proposed rules amend §84.40, Driver Education School Licensure Requirements, by: (1) moving subsection (k) regarding advertising to §84.80, Names and Advertising; (2) adding a change of address for a driver education school to the licensee reporting requirements; (3) clarifying rule language; (4) renumbering the subsections accordingly; and (5) correcting grammatical errors.

The proposed rules amend §84.41, Driver Education School Responsibility, by: (1) changing the title of the section to Driver Education School Responsibilities; (2) clarifying rule language related to 'classroom' and 'in-car' instruction; and (3) requiring a driver education school or its registered agent for service of process to be located within the state.

The proposed rules amend §84.42, Motor Vehicles, to clarify language regarding inspections required by the Texas Department of Motor Vehicles.

The proposed rules repeal existing §84.43, Driver Education Certificates, which establish the responsibilities regarding the purchase, issuance, care and control of driver education certificates and numbers by driver education schools.

The proposed rules add new §84.43, Driver Education Certificates, which (1) replace and reorganize previous subsections to clarify the procedures by which licensed driver education schools, course providers, exempt driver education schools, public schools, colleges, universities, and educational service centers (ESC) may obtain driver education certificates and numbers from the Department; (2) update responsibilities for these entities regarding the purchase, issuance, care and control requirements associated with missing, stolen, transferred, or replaced driver education certificates and numbers; (3) integrate applicable subsections from §84.601, Procedures for Student Certifications and Transfers, relating these procedures and responsibilities to apply to exempt driver education schools, public schools, colleges, universities, and ESCs; and (4) renumber the subsections accordingly.

The proposed rules amend §84.44, Driver Education Instructor License, to: (1) replace outdated terminology, including the term "teacher of record"; (2) update driver education instructor continuing education requirements; (3) reduce and simplify barriers to licensure for driver education instructors by implementing provisions of HB 2847 by no longer requiring an applicant to possess a Texas teaching certificate, and removing the Teaching Assistant Full and Supervising Teaching Assistant Full license types; (4) clarify driver education instructor qualifications and responsibilities; (5) delete unnecessary rule provisions; and (6) renumber the subsections accordingly.

The proposed rules amend §84.45, Student Progress, to remove requirements for driver education schools to submit student progress procedures for Department approval.

The proposed rules amend §84.46, Attendance and Makeup, to: (1) update and reorganize language; and (2) remove the requirement of sending the driver education school student makeup policy to the Department.

The proposed rules amend §84.51, Parent Taught Submission of Course for Department Approval, to: (1) require a parent taught course provider to include its business name and registration number on its registration page and website; and (2) authorize a parent taught course provider to accept students redirected from another website under certain conditions.

The proposed rules amend §84.52, Cancellation of Department Approval, to correct a statutory reference to the Parent-Taught Driver Education program.

The proposed rules amend §84.60, Driving Safety School Licensure Requirements, to correct grammar.

The proposed rules amend §84.62, Course Provider License Requirements, to correct grammar.

The proposed rules amend §84.64, Driving Safety Instructor License Requirements, to: (1) reflect the DSY25 Course instructor license requirements pursuant to Texas Education Code §1001.111; and (2) renumber subsections accordingly.

The proposed rules amend §84.70, Drug and Alcohol Driving Awareness Program School Licensure Requirements, to correct grammar.

The proposed rules amend §84.72, Instructor License Requirements, to clarify and correct language, and remove outdated references to the Texas Department of State Health Services.

The proposed rules amend §84.80, Names and Advertising, to: (1) clarify language; (2) add the subsection transferred from §84.40 requiring the driver education school name and number when advertising; and (3) allow a driver education school license applicant to advertise with conditions.

The proposed rules amend §84.81, Recordkeeping Requirements, to: (1) modify driver education school recordkeeping requirements; (2) clarify language; and (3) renumber subsections accordingly.

The proposed rules amend §84.82, Student Enrollment Contracts, to require a driver education school to provide a student makeup policy to each student, and clarify where to file grievances against the school, if necessary, with the Department.

The proposed rules amend §84.84, Notification of Public Interest Information and Participation, to: (1) require licensees to include the Department's email address on business documentation and signage for the purpose of directing complaints to the Department regarding the DES program; (2) correct grammar; and (3) remove the requirement that Department information relating to a complaint be included on a bill for service.

The proposed rules add new §84.85, Statement of Assurance, to require driver education schools and course providers to submit a Statement of Assurance to memorialize and affirm that course materials have been updated to reflect changes in applicable law.

The proposed rules amend §84.90, Facilities and Equipment, to: (1) prohibit driver training schools from maintaining a classroom facility in a private residence; and (2) clarify language.

The proposed rules add new §84.103, AMI Driver Education School Audits, to provide for Department audits of driver education schools offering courses delivered by AMI.

The proposed rules amend §84.200, Cancellation and Refund Policy, to clarify language.

The proposed rules amend §84.300, Driver Education Fees, to reduce driver education course and school fees.

The proposed rules amend §84.301, Driving Safety Fees, to reduce driving safety school, driving safety course and course provider fees.

The proposed rules amend §84.302, Drug and Alcohol Driving Awareness Fees, to: (1) reduce drug and alcohol driving awareness school, program, and instructor fees; and (2) indicate the current fee for the parent taught driver education guide form.

The proposed rules amend §84.500, Courses of Instruction for Driver Education Schools, to enhance delivery of driver education school course material by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require driver education schools to certify translation of course materials in languages other than English; (3) limit the times in which school supervised in-car instruction can occur on a given day; (4) require a driver education instructor to be physically present for the type of instruction given and limit persons authorized to sign completed classroom instruction records for each student; (5) reduce the number of content validation questions required with the use of adult student online driver education video course material; (6) require online schools to provide specific hours of access for technical assistance to its students; (7) require an online driver education school to include its business name and registration number on its registration page and website; (8) authorize an online driver education school to accept students redirected from another website under certain conditions; (9) increase times for students to respond to personal validation questions for online driver education courses; (10) delete license types removed by HB 2847; (11) establish qualification standards for enrollment of a student in an instructor development course based upon the number and type of moving violations accumulated during a previous three year period; (12) renumber subsections accordingly; and (13) clarify language.

The proposed rules amend §84.501, Driver Education Course Alternative Method of Instruction, to enhance delivery of driver education course material using an AMI by making changes to: (1) recognize minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) place limits on the number and the time to respond to personal and content validation questions posed during the AMI driver education course; (3) require an AMI driver education course to include its business name and registration number on its registration page and website; (4) authorize an AMI driver education course to accept students redirected from another website under certain conditions; (5) set Department approval for renewal of an AMI driver education course to even-numbered years; (6) require schools employing AMI to provide specific hours of access for technical assistance to its students; (7) delete license types removed by HB 2847; (8) renumber subsections accordingly; and (9) clarify language.

The proposed rules amend §84.502, Driving Safety Courses of Instruction, to enhance delivery of course material for the Driving Safety Course by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require driving safety, continuing education and instructor development courses to certify translation of driving safety course materials in languages other than English; (3) set additional requirements for course providers in submission of driving safety instructor training guides with applications for review by the Department; (4) require Department approval for a renewal of course approval for a driving safety course to even-numbered years; (5) removed requirement that course providers report a schedule of instructor development course dates to the Department; (6) renumber subsections accordingly; and (7) clarify language.

The proposed rules amend §84.503, Specialized Driving Safety Courses of Instruction, to enhance delivery of course material for the Specialized Driving Safety Course by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require specialized driving safety continuing education and instructor development courses to certify translation of driving safety course materials in languages other than English; (3) removed requirement that course providers report a schedule of instructor development course dates to the Department; and (4) clarify language.

The proposed rules amend §84.504, Driving Safety Course Alternative Delivery Method, to enhance delivery of driving safety course material using an alternative delivery method (ADM) by making changes to: (1) modify minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business

operation modifications; (2) require an ADM driving safety or specialized driving safety course provider to include its business name and registration number on its registration page and website; (3) increase response times for personal validation questions; (4) reduce the number of required questions for content validation; (5) require Department approval for a renewal of an ADM driving safety or specialized driving safety course to even-numbered years; (6) require ADM driving safety course providers to provide specific hours of access for technical assistance to its students; (7) authorize an AMD driving safety course provider to accept students redirected from another website under certain conditions; (8) modify video requirements for the delivery of ADM driving safety instructional course material; (9) renumber subsections accordingly; and (10) clarify language.

The proposed rules amend §84.505, Drug and Alcohol Driving Awareness Programs of Instruction, to enhance delivery of drug and alcohol driving awareness program (DADAP) course material by making changes to: (1) modify duration times for instructional materials to allow customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) certify translation of DADAP course content materials in languages other than English; and (3) clarify language.

The proposed rules amend §84.506, Drug and Alcohol Driving Awareness Programs Alternative Delivery Method, to enhance delivery of the drug and alcohol driving awareness program (DADAP) course material using an alternative delivery method (ADM) by making changes to: (1) recognize minimum course content times to accommodate customization of curriculum to address technological advances, legislative changes, student needs, and business operation modifications; (2) require a drug and alcohol driving awareness program ADM course to include its business name and registration number on its registration page and website; (3) ease personal validation course exclusion and response time requirements for online questions; (4) reduce the number of required questions for program content validation; (5) require Department approval for a renewal of an ADM DADAP course to even-numbered years; (6) require ADM DADAP courses to provide adequate access to technical assistance for its students; (7) authorize a drug and alcohol driving awareness school offering an ADM course to accept students redirected from another website under certain conditions; (8) renumber subsections accordingly; and (9) clarify language.

The proposed rules add new §84.507, Driving Safety Course for Driver Younger than 25 Years of Age, pursuant to Texas Education Code §1001.111.

The proposed rules amend §84.600, Program of Organized Instruction, to: (1) reduce regulatory burdens on public schools by eliminating outdated course programs of student instruction for delivery of a driver education plan; (2) ease qualifications for obtaining a learner's license; (3) renumber subsections accordingly; and (4) correct language.

The proposed rules repeal existing §84.601, Procedures for Student Certification and Transfers, which describe the responsibilities for provision and transfer of driver education certificates by public schools, ESCs, exempt driver education schools, colleges and universities.

The proposed rules add new §84.601, Procedures for Student Certification and Transfers, which (1) move applicable subsections to §84.43, Driver Education Certificates, to organize and include the procedures and responsibilities regarding the purchase, issuance, care and control requirements associated with missing, stolen, transferred, or replaced driver education certificates and numbers to exempt driver education schools, public schools, colleges, universities, and ESCs; and (2) clarify language.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon, has determined that for each year of the first five years the proposed rules are in effect, there will be an estimated loss in revenue to the state. The estimated loss in revenue will be driven by the proposed rules related to reductions in DES initial and renewal license fees for various licenses as follows:

The initial application fee for a primary driver education school will decrease from $1,000 to $500. The agency anticipates receiving approximately 22 applications per year for the next five years, a decrease of $11,000 per year.

The initial application fee for a branch driver education school will decrease from $850 to $500. The agency anticipates receiving approximately 15 applications per year for the next five years, a decrease of $5,250 per year.

The renewal application fees for both primary and a branch driver education schools will decrease from $200 to $100. The agency anticipates receiving approximately 440 applications per year for the next five years, a decrease of $44,000 per year.

The fee for a change of the physical address for a driver education primary school and branch will decrease from $180 to $150. The agency anticipates receiving approximately 28 requests per year for the next five years, a decrease of $840 per year.

The fee for a change of name of a driver education school or to change the name of an owner will decrease from $100 to $50. The agency anticipates receiving approximately 4 requests per year for the next five years, a decrease of $200 per year.

The fee for a driver education school changing ownership as defined under §84.2(6), will decrease from $1,000 to $500 for a primary driver education school and decrease from $850 to $500 for a branch driver education school. The agency anticipates receiving approximately 4 requests per year for the next five years for primary schools, a decrease of $2,000 per year, and approximately one request per year for the next five years for branch schools, a decrease of $350 per year.

The application fee for approval of a traditional driver education course exclusively for adults will decrease from $500 to $200. The agency anticipates receiving approximately 11 applications per year for the next five years, a decrease of $3,300 per year.

The application fee for approval of an online driver education course exclusively for adults will decrease from $9,000 to $5,850. The agency anticipates receiving approximately one application per year for the next five years, a decrease of $3,150 per year.

The application fee for approval of a 32-hour AMI for driver education classroom will decrease from $15,000 to $9,750. The agency anticipates receiving approximately one application per year for the next five years, a decrease of $5,250 per year.

The application fee for approval of part of a 32-hour AMI for driver education classroom will decrease from $500 to $200 per instructional hour. The agency anticipates receiving approximately zero applications per year for the next five years.

The fee for a driving safety school changing ownership as defined under §84.2(6),will decrease from $150 to $100. The agency anticipates receiving approximately four requests per year for the next five years, a decrease of $200 per year.

The initial application fee for a driving safety course provider will decrease from $2,000 to $500. The agency anticipates receiving approximately six applications per year for the next five years, a decrease of $9,000 per year.

The application fee for annual renewal of a driving safety course provider will decrease from $200 to $100. The agency anticipates receiving approximately 57 applications per year for the next five years, a decrease of $5,700 per year.

The fee for a change of name of a driving safety course provider or name of owner will decrease from $100 to $50. The agency anticipates receiving approximately one request per year for the next five years, a decrease of $50 per year.

The fee for a driving safety course provider change in ownership as defined under §84.2(6), will decrease from $2,000 to $500. The agency anticipates receiving approximately two notices per year for the next five years, a decrease of $3,000 per year.

The fee for a driving safety course approval will decrease from $9,000 to $5,850. The agency anticipates receiving approximately 16 requests for approval per year for the next five years, a decrease of $50,400 per year.

The fee for a specialized driving safety course approval will decrease from $9,000 to $5,850. The agency anticipates receiving approximately zero requests for approval per year for the next five years.

The initial application fee for a drug and alcohol driving awareness school will decrease from $150 to $100. The agency anticipates receiving approximately four applications per year for the next five years, a decrease of $200 per year.

The fee for a drug and alcohol driving awareness school change of ownership as defined under §84.2(6), will decrease from $150 to $100. The agency anticipates receiving approximately zero notices per year for the next five years.

The fee for a drug and alcohol awareness program approval will decrease from $9,000 to $5,850. The agency anticipates receiving approximately zero requests per year for the next five years.

The fee for a drug and alcohol driving awareness program alternative delivery method approval will decrease from $9,000 to $5,850. The agency anticipates receiving approximately zero requests per year for the next five years.

The initial application fee for a drug and alcohol driving awareness instructor license will decrease from $75 to $50. The agency anticipates receiving approximately four applications per year for the next five years, a decrease of $100 per year.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there will not be an estimated increase in revenue to the state.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to the revenues of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefits expected as a result of the adoption of the proposed rules are as follows:

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The industry will benefit from the proposed rules with the removal of certain eligibility restrictions and the opportunity for more individuals to obtain a driver education instructor's license. Applicants for a driver education school will benefit from removing the requirement of having a "brick and mortar" location before submitting an online driver education course for approval, allowing for more people to be able to enroll in an online driver education course and more people to offer a course.

Curriculum Rules

The proposed rules related to the changes in driver training curriculum delivery by driver training schools and course providers are expected to provide public benefits including: (1) more efficient utilization of the Department's online search system to identify Department-approved licensees by mandating the provision of specific licensee identifying information on websites and advertisements; (2) clarify the requirements for posting of complaint filing information to allow consumers to file complaints against licensees; (3) consumers benefit with the provision of technical assistance for questions posed or issues encountered while taking an online DES course; (4) licensees benefit from reduced restrictions related to licensure requirements, recordkeeping, administrative duties associated with student course completion documentation, continuing education for instructors, and the addition of more flexibility in the delivery of driver training curriculum and greater efficiency in business operations; (5) schools and course providers benefit from the easing of certain advertising restrictions relating to promotion of new or upcoming driver training or drug and alcohol awareness schools, and the changes in time allotments for course content provide more options to organize curriculum; (6) consumers will benefit from the increase in the amount of time given to respond to content and personal validation questions; and (7) online driver training course providers will have greater flexibility in designing examinations through a reduction in the number of questions posed per multimedia clip presented during the course.

Fee Rules

By reducing the costs of fees associated with the operation of the driver education and safety program through the proposed rules, the public is expected to benefit from (1) more choices in selecting a school or course due to anticipated additional license holders; (2) potential reduced costs for driver education instruction for the public due to additional school choices; and (3) increasing numbers of new instructors due to the possible increase in the number of new businesses, allowing for more people to be able to obtain their instructor license.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

4. The proposed rules do require an increase or decrease in fees paid to the agency. The proposed rule changes reduce fees for a number of license types.

5. The proposed rules do create a new regulation. The proposed rules (1) define the Instructor Development Course and Instructor Development Programs relating to the certification of driver training instructors, and remove the "teacher of record" designation to allow school owners more flexibility to administer student documentation; (2) introduce new rule §84.85 that requires licensees to file a Statement of Assurance to confirm updates to driver training course materials to reflect amendments to applicable law; (3) introduce new rule §84.103 which authorizes the Department to conduct audits of AMI Driver Education Schools; and (4) establish new rule §84.507 for the Driving Safety Course for a Driver Under 25 Years of Age, pursuant to 1001.111, Texas Education Code, and the requirements for an instructor for the course.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implementing HB 2847 eliminate the requirement for an online driver education school to have a physical "brick and mortar" location. They also eliminate the requirement to hold a Texas Teaching Certificate to be eligible for a Supervising Teacher or a Driving Education Teacher license and remove the Supervising TA-Full and the TA-Full license types.

The proposed rules which address the changes in delivery of DES curriculum (1) clarify the roles and responsibilities of driver education instructors in administering the course materials to students; (2) expand opportunities for instructors to obtain continuing education credit; (3) ease requirements on driver education school student progress reporting, recordkeeping and provision of information to consumers on filing complaints with the Department; (4) require Parent Taught Driver Education Course Providers and Online Driver Training Schools to provide course identification information to consumers on their websites; (5) require a provider of a course offered in a language other than English to provide a written declaration that the translation of the course materials is true and correct in the proposed language; (6) reduce advertising restrictions on new driver training schools and drug and alcohol awareness schools pending licensure; (7) ease restrictions on the amount of media content allowed in a course; (8) reduce the number of validation questions and expands time to provide answers for courses developed by online providers; and (9) increase access for students to technical assistance for online driver training courses.

Overall, the proposed rules include expansion of some definitions or rules to provide more clarity in driver training and safety business operations, Driver Training Instructor training requirements, consumer protection, licensing, and continuing education. Moreover, the proposed rules update curriculum requirements to address technological advances, implement legislative changes, and address educational modifications to course content and material. The proposed rules also make numerous changes which improve or eliminate operational requirements for school owners, course providers, and instructors which are impediments to efficiency, repetitive, and outdated.

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

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.1, §84.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing

body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.1. Authority.

This chapter is promulgated under Texas Occupations Code, Chapter 51, Texas Education Code, Chapters 29 and 1001; [~~Chapter 1001, and 29;~~] and Texas Transportation Code, Chapter 521.

§84.2. Definitions.

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

(1) ADE-1317--The driver education certificate of completion used for certifying completion of a driver education course exclusively for adults. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. The ADE-1317 consists of two parts designated as follows: Texas Department of Public Safety Copy and the School Copy. It is a government record as defined under Texas Penal Code, §37.01(2).

(2) - (5) (No change.)

(6) Change of ownership of a school or course provider--A change in the control of the school. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50 percent [~~50%~~] of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50 percent [~~50%~~] of the school or course provider, or of the owning partnership or corporation has been sold or transferred; or

(C) (No change.)

(7) - (10) (No change.)

(11) DE-964--The driver education certificate of completion used for certifying completion of an approved minor and adult driver education course. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. The DE-964 certificate consists of four parts designated as follows: Texas Department of Public Safety Copies (Instruction Permit and Driver's License), Insurance Copy and School Copy. It is a government record as defined under Texas Penal Code, §37.01(2).

(12) DSY25--refers to the Driving Safety Course for Driver Younger Than 25 Years of Age pursuant to §1001.111, Education Code.

(13) [~~(12)~~] Educational objectives--The goal to promote respect for and encourage observance of traffic laws and traffic safety responsibilities of driver education and citizens; reduce traffic violations; reduce traffic-related injuries, deaths, and economic losses; and motivate development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(14) [~~(13)~~] Inactive course--a driving safety or specialized driving safety course for which no uniform certificates of completion or course completion certificate numbers have been purchased for 36 months or longer.

(15) Instructor Development Course (IDC)--A six semester hour or nine semester hour department-approved course designed to prepare participants to obtain a driver education instructor license. This course is provided by a driver education school in lieu of completing the required semester hours in driver traffic and safety education from an accredited college or university.

(16) Instructor Development Program (IDP)--A six semester hour department-approved course designed to prepare a licensed driver education instructor to supervise the instruction of a department-approved driver education instructor development course. This course is provided by a driver education school in lieu of completing the required semester hours in driver traffic and safety education from an accredited college or university.

(17) [~~(14)~~] Instructor trainer--A driving safety instructor trainer (DSIT) or specialized driving safety instructor trainer (SDSIT) who has been trained to prepare instructors to give instruction in a specified curriculum. A DSIT or SDSIT supervises the student instructor trainee during their practical teaching sessions, overseeing their presentation of the course. The DSIT or SDSIT may provide feedback and guidance to the trainee concerning their practical teaching but would not provide the training of techniques of instruction and in-depth familiarization with course material to the trainee during the Instructor Development Course.

(18) [~~(15)~~] National criminal history record information--Criminal history record information obtained from the Federal Bureau of Investigation under Texas Government Code, §411.087, based on fingerprint identification information.

(19) [~~(16)~~] New Course--A driving safety or specialized driving safety course is considered new when it has not been approved by the department to be offered previously, or has been approved by the department and become inactive; or the content, lessons, or delivery of the course has been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(20) [~~(17)~~] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(21) [~~(18)~~] Post program exam--an exam designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(22) [~~(19)~~] Pre-program exam--an exam given during the program introduction using questions drawn from material to be covered in the course to determine the level of drug and alcohol knowledge possessed by the student prior to receiving instruction.

(23) [~~(20)~~] Primary school--A licensed driver education main school that may have branch schools.

(24) [~~(21)~~] Public or private school--an accredited public or non-public secondary school.

(25) [~~(22)~~] Specialized driving safety course--a six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seats systems and the wearing of seat belt and other occupant restraint system.

(26) Teaching techniques--The method of interpersonal influence which aims to induce learning and the development of a student by different means. It must be comprised of principles and methods, used individually or in combination, for increasing class participation, demonstration, recitation, memorization, or communication.

[~~(23) Teacher of record--A licensed supervising driver education teacher or licensed driver education teacher employed at the school who is directly responsible for the classroom instructional phase provided by a teaching assistant full or supervising teaching assistant full.~~]

(27) [~~(24)~~] Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered and supplied by course providers or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Texas Transportation Code, Chapter [~~chapter~~] 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(28) [~~(25)~~] Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

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 26, 2020.

TRD-202001644
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40 - 84.46

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.40. Driver Education School Licensure Requirements.

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

(d) Purchase of a driver education school.

(1) A person, partnership, or corporation[~~,~~] purchasing a licensed driver education school shall obtain an original license or branch school license as applicable.

(2) (No change.)

(e) New location or change of address.

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

(f) Renewal of driver education school license. A complete application for the renewal of a license for a primary or branch driver education school shall be submitted before the expiration of the license and shall include the following:

(1) a completed application for renewal;

(2) (No change.)

(3) a current list of instructors employed at the school [~~if changes have occurred~~];

(4) an executed bond or executed continuation agreement for the bond currently approved by, and on file with, the department or an approved alternate form of security;

(5) if applicable, a current list of all motor vehicles used for instruction [~~if changes have occurred~~]; and

(6) if applicable, documentation showing that all vehicles used for instruction are properly insured.

(g) (No change.)

(h) School closure.

(1) The school owner shall notify the department at least fifteen (15) business days before the anticipated school closure. In addition, the school owner shall provide written notice of the actual discontinuance of the operation on the day of cessation of classes. A school shall make all records available for review to the department upon request.

(2) The department may declare a school to be closed:

(A) (No change.)

(B) when the school has stopped delivering instruction and training in driver education [~~conducting classes~~] and has failed to fulfill contractual obligations to its students; or

(C) (No change.)

(3) (No change.)

(i) - (j) (No change.)

[~~(k) A school shall not advertise without including the school name or the school number exactly as it appears on the driver education school license.~~]

(k) [~~(l)~~] Contract site. A school shall receive approval from the department prior to conducting a class at a contract site, and approval may be granted by the department upon review of the agreement made between the licensed driver education school and the contract site. The course shall be subject to the same rules that apply at the licensed driver education school, including periodic inspections by department representatives. An on-site inspection is not required prior to approval of the site.

§84.41. Driver Education School Responsibilities [~~Responsibility~~].

(a) Each driver education school must:

(1) Maintain a current mailing address, telephone number, and e-mail address (if applicable) with the department;[~~,~~]

(2) ensure that each individual permitted to give [~~classroom~~] instruction [~~or in-car instruction~~] at the school [~~or classroom location~~] has a valid [~~current~~] driver education instructor's license with the proper endorsement issued by the department;[~~,~~]

(3) - (5) (No change.)

(6) ensure that no instructor provides more than 10 hours of behind-the-wheel instruction per day.

(b) (No change.)

(c) Each primary driver education school owner-operator or employee that purchases driver education certificate numbers from the department must:

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

(d) Driver education schools must be located in, or maintain a registered agent in, the state of Texas. A registered agent's address shall not be used for a driver education school's physical or mailing address.

§84.42. Motor Vehicles.

All in-car instruction of students in driver education schools shall be conducted in motor vehicles owned or leased by the owner of the driver education school in the name of the driver education school. If the student is disabled, the school may use a motor vehicle that is owned by the student or student's parent that is equipped with special vehicle controls. All school motor vehicles and vehicles for students with physical disabilities that are used to demonstrate or practice driving lessons shall:

(1) be properly registered and inspected as required by the Texas Department of Motor Vehicles;

(2) - (4) (No change.)

§84.43. Driver Education Certificates.

(a) General provisions applicable to the handling of driver education certificates and driver education certificate numbers by relevant driver training entities.

(1) A licensed driver education school, exempt driver education school, public school, education service center (ESC), parent taught driver education course provider, college or university (collectively, as appropriate, referred to as "relevant driver training entities") may request the serially numbered driver education certificates and/or certificate numbers by submitting an order form prescribed by the department stating the number of driver education certificates and/or certificate numbers to be purchased and include payment of all appropriate fees. A mailed or faxed order form shall have the signature of an authorized representative of the aforementioned relevant driver training entities. A signature is not required for orders placed through the online system.

(2) Unassigned or blank driver education certificates and/or certificate numbers shall not be transferred between relevant driver training entities.

(3) Each relevant driver training entity shall maintain effective protective measures to ensure that driver education certificates and/or certificate numbers are secure.

(4) All unaccounted driver education certificates and/or certificate numbers shall be reported to the department within fifteen (15) working days of the discovery of the incident. In addition, each relevant driver training entity shall be responsible for conducting an investigation to determine the circumstances surrounding their unaccounted driver education certificates. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the department within thirty (30) calendar days of the discovery.

(5) Each relevant driver training entity shall return unissued driver education certificates and/or certificate numbers to the department within thirty (30) calendar days from the date of the discontinuance of the driver education program, unless otherwise notified.

(6) Each relevant driver training entity shall issue driver education certificates and/or certificate numbers in serial number order as purchased from the department.

(7) Each relevant driver training entity shall issue driver education certificates and/or driver education certificate numbers only to students who have successfully completed the applicable portion of the approved driver education course.

(8) If a duplicate driver education certificate or driver education certificate number is to be issued, the duplicate shall indicate the control number of the original driver education certificate or driver education certificate number.

(9) Each relevant driver training entity shall maintain reconciliation records of purchased, issued, unissued and/or unassigned driver education certificates and/or driver education certificate numbers in ascending control number order. The reconciliation records shall be readily available for review by representatives of the department. Each relevant driver training entity shall ensure security and loss prevention of the reconciliation record data.

(10) Each relevant driver training entity shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all driver education certificates and/or driver education certificate numbers purchased, issued and unissued.

(11) An ADE-1317 driver education certificate and/or certificate number shall not be used to replace a DE-964 driver education certificate and/or certificate number.

(12) Each unaccounted or missing original or duplicate course driver education completion certificate number or blank or unissued original or duplicate driver education certificate may be considered a separate violation. This may include lost, missing, stolen, or otherwise unaccounted original or duplicate driver education certificate numbers or blanks or unissued original or duplicate driver education certificates.

(13) The driver education certificate is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the driver education certificate may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(14) The right to receive driver education certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the relevant driver training entity or its designee fails to provide information on records requested by the department within the required time.

(b) Licensed driver education school responsibilities.

(1) Only primary driver education schools shall order driver education certificates. The primary driver education school shall maintain a record reconciling all driver education certificates that are distributed by the primary driver education school to branch driver education schools and contract sites.

(2) A licensed driver education school shall issue driver education certificates only to students who have successfully completed the applicable elements of the approved driver education course.

(A) The "For Learner License Only" portion of the DE-964 certificate shall be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the DE-964 certificate shall be issued to the student upon completion of the driver education program.

(C) The exception to subsections (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(3) The DPS copy of a driver education certificate must contain the original signature of the TDLR licensed instructor. The name of the driver education school owner or its designee may be written, stamped, or typed.

(c) Parent taught driver education course providers responsibilities.

(1) The parent taught driver education course provider shall issue DE-964 certificates only to students who have successfully completed the applicable elements of the approved parent taught driver education course.

(A) The parent taught driver education course provider shall receive proof the student has completed Module One of the Program of Organized Instruction for Driver Education and Traffic Safety before issuing the "For Learner License Only" portion of the DE-964 certificate.

(B) The parent taught driver education course provider shall receive proof the student has completed the approved parent taught driver education before issuing the "For Driver License Only" portion of the DE-964 certificate.

(C) The exception to Subsections (A) and (B) is a request for transfer by the parent or legal guardian of the student. The parent taught driver education course provider shall complete the transfer DE-964 certificate to indicate the completion of Module One and the entire course.

(2) The name of the owner of the parent taught driver education course or its designee may be written, stamped, or typed.

(d) Public Schools, Education Service Centers, Colleges or Universities responsibilities.

(1) The driver education certificates shall be issued to the superintendent, college or university chief school official, ESC director, or their designee to be responsible for managing the certificates for the school. This does not remove the superintendent, college or university chief school official, or ESC director from obligations pursuant to this subchapter to oversee the program.

(2) The department will accept purchase requisitions from school districts.

(3) Each superintendent, college or university chief school official, ESC director, or their designee shall ensure that the policies concerning driver education certificates are followed by all individuals who have responsibility for the certificates.

(4) The superintendent, college or university chief school official, ESC director, or their designee must ensure that employees complete, issue, or validate a driver education certificate only to a person who has successfully completed the entire portion of the course for which the driver education certificate is being used.

(A) The "For Learner License Only" portion of the driver education certificate shall be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the driver education certificate shall be issued to the student upon completion of the driver education program.

(C) The exception to subsections (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the certified instructor. The name of the superintendent, college or university chief school official, ESC director, or their designee may be written, stamped, typed, or omitted.

(6) The superintendent, college or university chief school official, ESC director, or their designee shall complete the affidavit on the driver education certificate if the certified instructor has left the driver education program, seriously ill or deceased.

(7) The right to receive DE-964 certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the superintendent, college or university chief school official, ESC director, or their designee fails to provide information on records requested by the department within the allotted time.

§84.44. Driver Education Instructor License.

(a) Application for licensing as a driver education instructor must be made on forms prescribed by the department. A person applying for an original driver education instructor license must:

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

(3) submit a completed application with non-refundable application fee as prescribed by the department;

(4) - (7) (No change.)

(b) Driver education instructor license endorsement qualifications and responsibilities:

(1) Supervising [~~driver education~~] teacher qualifications:

(A) must have a valid driver education teacher instructor license, issued by the department, for at least one year; and [~~current, valid Texas teacher's certificate and an official transcript indicating completion of 15 semester hours of driver and traffic safety education from an accredited college or university or evidence of completion of a department-approved instructor development course that is equivalent to 15 semester hours. Completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if the department determines that the course is equivalent;~~]

(B) must have an official transcript indicating completion of 15 semester hours of driver and traffic safety education from an accredited college or university; or [~~may perform instruction and administration of the classroom and in-car phases of driver education~~

as prescribed in the Program of Organized instruction to minors and adults;]

(C) must have evidence of completion of a department-approved supervising instructor development course that is equivalent to 15 semester hours of driver and traffic safety education from an accredited college or university. [may perform instruction of a department-approved driver education instructor development course;]

[(D) serve as a teacher of record.]

(2) Supervising teacher responsibilities:

(A) may perform instruction and administration of the classroom and in-car phases of driver education;

(B) may perform instruction of a department-approved supervising driver education instructor development course; or

(C) may perform instruction of a department-approved driver education instructor development course.

(3) [(2)] Driver education teacher qualifications:

(A) must have [a current, valid Texas teacher's certificate and] an official transcript indicating completion of 9 semester hours of driver and traffic safety education from an accredited college or university; or [evidence of completion of a department-approved instructor development course that is equivalent to 9 semester hours. Completion of course work in an approved alternative certification program may suffice for all or part of the 9 semester hours of driver and traffic safety education if the department determines that the course is equivalent;]

(B) evidence of completion of a department-approved instructor development course that is equivalent to 9 semester hours. [may perform instruction and administration of the classroom and in-car phases of driver education as prescribed in the Program of Organized instruction to minors and adults;]

[(C) may serve as a teacher of record.]

(4) A driver education teacher may perform instruction and administration of the classroom and in-car phases of driver education.

(5) [(3)] Teaching assistant qualifications:

(A) must have an official transcript indicating completion of 6 semester hours of driver and traffic safety education from an accredited college or university; or [must have a valid teaching assistant license issued by the department that indicates approval for in-car instruction only;]

(B) must have [an official transcript indicating completion of 6 semester hours of driver and traffic safety education from an accredited college or university or] evidence of completion of a department-approved instructor development course that is equivalent to 6 semester hours. [Completion of course work in an approved alternative certification program may suffice for all or part of the 6 semester hours of driver and traffic safety education if the department determines that the course is equivalent;]

[(C) may only perform in-car instruction.]

[(4) Teaching assistant-full:]

[(A) must have a valid teaching assistant license issued by the department that indicates approval for all phases of laboratory instruction and instructional assistance in the classroom;]

[(B) must have an official transcript indicating completion of 9 semester hours of driver and traffic safety education from an accredited college or university or evidence of completion of a department approved instructor development course that is equivalent to 9 semester hours. Completion of course work in an approved alternative certification program may suffice for all or part of the 9 semester hours of driver and traffic safety education if the department determines that the course is equivalent;]

[(C) may perform all phases of in-car instruction and may assist certified teachers in the classroom phase of minor and adult driver education. All classroom instruction provided by a teaching assistant-full shall be endorsed by the teacher of record. In emergency situations, the school owner may request prior approval from the department to endorse classroom instruction records provided by a teaching assistant-full.]

[(5) Supervising teaching assistant-full:]

[(A) must have a valid teaching assistant-full license issued by the department that indicates approval for all phases of laboratory instruction and instructional assistance in the classroom;]

[(B) must have an official transcript indicating completion of 15 semester hours of driver and traffic safety education from an accredited college or university or evidence of completion of a department-approved instructor development course that is equivalent to 15 semester hours. Completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if the department determines that the course is equivalent.]

[(C) may teach all phases of in-car instruction;]

[(D) may assist in the classroom phase of minor and adult driver education, however, any classroom instruction provided must be endorsed by the teacher of record]

[(E) may perform instruction in a department approved driver education instructor development course.]

(6) A teaching assistant may teach or provide only in-car instruction.

(7) [(6)] Rehabilitative driver education in-car instructor qualifications:[.]

(A) must have evidence of employment from a specific hospital or approved community rehabilitation program; and [a valid driver education teaching assistant certificate issued by the department or evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours;]

(B) must have a valid teaching assistant license issued by the department; or [evidence of employment from a specific hospital or approved community rehabilitation program.]

(C) must have evidence of completion of an approved driver education program for certification as a teaching assistant that is equivalent to at least six semester hours. [The endorsement will be valid while the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program.]

(8) Rehabilitative driver education in-car instructor responsibilities:

(A) may only perform in-car instruction; and

(B) the endorsement will be valid while the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program.

(c) (No change.)

(d) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education. Credit will be given only for courses that were completed during the appropriate licensing period.

(A) (No change.)

(B) Credit may also [~~may~~] be given for any of the following:

(i) successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of official school documentation indicating a passing grade;[.]

(ii) successful completion of national, state, or regionally sponsored in-service workshops, seminars, or conferences. These programs must pertain to subject matters that relate to the practice of driver education or teaching techniques;[.]

(iii) successful completion of an approved six-hour driving safety, specialized, or drug and alcohol driving awareness course once every three years if the licensee is not endorsed or has not been endorsed as an instructor in that program for a period of one year previous to class attendance; [~~, or~~]

(iv) successful completion of an approved continuing education course provided by a licensed driver education school; [~~.~~]

(v) successful completion of an eight-hour school bus driver recertification training course; or

(vi) successful completion of a Drug Offender Education Program.

(2) - (5) (No change.)

(6) A licensee may not receive credit for completion of a six-hour driving safety course, specialized, or drug and alcohol driving awareness course, if they have already received credit for one of these courses within the previous three years.

(e) - (g) (No change.)

§84.45. Student Progress.

Appropriate standards shall be implemented to ascertain the progress of the students.

(1) (No change.)

(2) Each primary school shall [~~submit to the department for approval procedures to~~] ensure that each student who attends the primary school and all branch schools demonstrates an acceptable level of mastery of the Program of Organized Instruction for Driver Education and Traffic Safety. Mastery is not related to passing the written examination for a driver's license administered by the Texas Department of Public Safety. Successful completion and mastery are prerequisites to awarding a grade of 70 percent [~~%~~] or above.

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

§84.46. Attendance and Makeup.

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

(d) A two-hour [~~2-hour~~] increment of behind-the-wheel instruction may be offered once during the behind-the-wheel instruction for each student and shall include 10 minutes of instructional break after 55 minutes of instruction as identified in §84.500 (relating to Courses of Instruction for Driver Education Schools).

(e) (No change.)

(f) Schools shall develop a makeup policy subject to review by the department upon request. [~~submit a makeup policy to the department for approval. All absences are subject to the attendance policy regardless of whether the student attends makeup lessons. Students may be allowed to complete up to ten hours of classroom makeup work assignments outside of regularly scheduled classroom instruction.~~] Schools shall not initiate nor encourage absences. Makeup policies shall adhere to the following requirements:

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

(3) All absences are subject to the attendance policy regardless of whether the student attends makeup lessons.

(4) Students may be allowed to complete up to ten hours of classroom makeup work assignments outside of regularly scheduled classroom instruction.

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

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16 TAC §84.43

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

§84.43. Driver Education Certificates.

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

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SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.51. Parent Taught Submission of Course for Department Approval.

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

(h) Course identification. All parent taught courses shall display the parent taught course provider name and registration number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(i) A parent taught course may accept students redirected from a website as long as the student is redirected to a webpage that clearly identifies the parent taught course provider and registration number offering the course. This information shall be visible before and during the student registration and course payment processes.

§84.52. Cancellation of Department Approval.

(a) A department-approved parent taught driver education course may have its approval cancelled upon a finding:

(1) That the course does not meet the standards required under §1001.112 [~~§1001.212~~] of the Code, or

(2) (No change.)

(b) (No change.)

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

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SUBCHAPTER E. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §§84.60, 84.62, 84.64

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.60. Driving Safety School Licensure Requirements.

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

(e) A complete application for the renewal of a license for a driving safety school must include the following:

(1) a completed application form for renewal;

(2) a current list of instructors;

(3) a current list of classrooms;

(4) an annual renewal fee, if applicable; and

(5) (No change.)

(f) - (g) (No change.)

§84.62. Course Provider License Requirements.

(a) - (h) (No change.)

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) a completed application for renewal;

(2) an annual renewal fee, if applicable;

(3) a new continuing education course; and

(4) executed bond or executed continuation agreement for the bond currently on file with the department.

(j) - (k) (No change.)

§84.64. Driving Safety Instructor License Requirements.

(a) Application for licensing as a driving safety or specialized driving safety, or DSY25 instructor shall be made on forms prescribed by the department. A person is qualified to apply for a driving safety or specialized driving safety instructor license who holds a valid Class A, B, C, or CDL driver's license, other than learner license or provisional license, for the preceding three years in the areas for which the individual is to teach, which has not been revoked or suspended in the preceding three years.

(b) A person applying for an original driving safety, [~~or~~] specialized driving safety, or DSY25 instructor's license must submit to the department the following:

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

(c) A person applying for a driving safety, [~~or~~] specialized driving safety, or DSY25 instructor license may qualify for the following endorsements:

(1) Driving safety instructor. The application shall include evidence of completion of 16 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing. Alternatively, a currently licensed instructor may submit a copy of a current driving safety instructor license, a specialized driving safety instructor license, DSY25 instructor license, or a current driver education instructor license and evidence of six [6] hours

of training and six [6] hours of demonstrative presentation teaching or practical teaching in the curriculum to be licensed. The six [6] hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum. The six [6] hours of demonstrative presentation or practical teaching shall be in the driving safety curriculum and under the direct supervision of a licensed driving safety instructor trainer endorsed in the same driving safety curriculum.

(2) Specialized driving safety instructor. The application shall include evidence of completion of 16 hours of training and 12 hours of practical teaching. The 16 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 12 hours of practical teaching shall be in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing. Alternatively, the applicant may submit a copy of a current driving safety instructor license or current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and six [6] hours of training and six [6] hours of demonstrative presentation or practical teaching. The six [6] hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The six [6] hours of demonstrative presentation or practical teaching shall be in the same specialized driving safety curriculum and under the direct supervision of a licensed specialized driving safety instructor trainer endorsed in the same specialized driving safety curriculum.

(3) DSY25 instructor. The application shall include evidence of completion of 16 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and eight hours of practical teaching in the same driving safety course with a statement signed by the course provider recommending the applicant for licensing. Alternatively, a currently licensed instructor may submit a copy of a current driving safety instructor license, a specialized driving safety instructor license, DSY25 instructor license, or a current driver education instructor license and evidence of six hours of training and four hours of demonstrative presentation teaching or practical teaching in the curriculum to be licensed. The six hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum. The four hours of demonstrative presentation or practical teaching shall be in the driving safety curriculum and under the direct supervision of a licensed driving safety instructor trainer endorsed in the same driving safety curriculum.

(4) [~~(3)~~] Driving safety instructor trainer. The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(A) a department-issued driver education instructor license or a Texas teaching certificate with driver education endorsement and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same driving safety course for which the individual is to teach;

(B) - (D) (No change.)

(5) [~~(4)~~] Specialized driving safety instructor trainer. The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer, a copy of current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor, and evidence of one of the following:

(A) a department-issued driver education instructor license or a Texas teaching certificate with driver education endorsement and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(B) - (D) (No change.)

(6) DSY25 instructor trainer. The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(A) a department-issued driver education instructor license or a Texas teaching certificate with driver education endorsement and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same driving safety course for which the individual is to teach;

(B) a teaching assistant certificate and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same driving safety course for which the individual is to teach;

(C) completion of all the requirements of a driving safety instructor and 60 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 12 hours shall be in the same driving safety course for which the individual is to teach; or six clock hours in a teaching methodology course; or

(D) proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and instructor training course prior to being licensed.

(7) [~~(5)~~] Instructor development course driving safety instructor trainer. The applicant [~~application~~] shall [~~include evidence of~~]:

(A) include evidence of completion of all the requirements for a driving safety instructor trainer plus an additional 30 hours of verifiable experience as a licensed driving safety instructor or driving safety instructor trainer in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course[~~. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and the instructor training course prior to being licensed or 6 clock hours in a teaching methodology course~~]; and

(B) submit a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in driving safety.

(8) [~~(6)~~] Instructor development course specialized driving safety instructor trainer. The applicant [~~application~~] shall include a copy of a current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and evidence of:

(A) completion of all the requirements for a specialized driving safety instructor trainer plus an additional 30 hours of verifiable experience as a licensed specialized driving safety instructor or specialized driving safety instructor trainer in the same specialized driving safety course for which the individual is to teach, or proof of authorship of an approved specialized driving safety course[~~. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and the instructor training course or 6 clock hours in a teaching methodology course prior to being licensed~~]; and

(B) submit a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in specialized driving safety.

(9) Instructor development course DSY25 instructor trainer. The applicant shall:

(A) include evidence of completion of all the requirements for a driving safety instructor trainer plus an additional 30 hours of verifiable experience as a licensed driving safety instructor or driving safety instructor trainer in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course; and

(B) submit a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in driving safety.

(d) A renewal application for a driving safety, [~~or~~] specialized driving safety, or DSY25 instructor license must be prepared using the following procedures.

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

(e) Continuing education requirements include the following:

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

(5) A driving safety, [~~or~~] specialized driving safety, or DSY25 continuing education course shall not be used for the continuing education requirement for a driver education instructor license.

(f) (No change.)

(g) All driving safety, [~~and~~] specialized driving safety, or DSY25 instructor license endorsement changes shall require the following:

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

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SUBCHAPTER F. DRUG AND ALCOHOL AWARENESS PROGRAMS AND INSTRUCTORS

16 TAC §84.70, §84.72

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.70. Drug and Alcohol Driving Awareness Program School Licensure Requirements.

(a) - (f) (No change.)

(g) Renewal of drug and alcohol driving awareness school license. A complete application for the renewal of a license for a drug and alcohol driving awareness school shall be submitted before the expiration of the license in accordance with Texas Education Code, Chapter 1001, and shall include the following:

(1) completed application for renewal; and

(2) renewal fee, if applicable. [~~; and~~]

(h) - (i) (No change.)

§84.72. Instructor License Requirements.

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

(c) A person applying for an original instructor license shall submit to the department the following:

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

(4) Alternatively, the applicant may submit a copy of a current [~~Texas Department of State Health Services~~] Alcohol and Drug Offender Education Program Instructor license [~~or current certification as a Texas Department of State Health Services Offender Education Counselor~~] and six [~~6~~] hours of training and six [~~6~~] hours of demonstrative presentation or practical teaching. The six [~~6~~] hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the alcohol and drug education curriculum. The six hours of demonstrative presentation or practical teaching shall be in the same alcohol and drug education curriculum and under the direct supervision of a licensed alcohol and drug education instructor trainer endorsed in the same alcohol and drug education curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing.

(d) - (i) (No change.)

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §§84.80 - 84.82, 84.84, 84.85

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing

body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.80. Names and Advertising.

(a) A licensed driver education school, driving safety school, department-approved course provider, or drug and alcohol awareness school may not conduct business or advertise under a name that is not distinguishable from [~~deceptively similar to~~] a name used by any other licensed driver education school, driving safety school, course provider or drug and alcohol awareness school, or tax-supported educational establishment in this state, unless specifically approved in writing by the department [~~executive director~~].

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

(d) An applicant applying for approval of a new license shall be allowed to advertise in a manner as approved by the department. Any publicly posted advertisement from a license applicant subject to license approval by the department shall include the following information:

(1) A notice stating "Driving School Coming Soon"; and

(2) Display a functioning phone number and email address for the school within the advertisement.

(e) An applicant applying for approval of a new license shall not:

(1) Enroll students or conduct classes in driver training or drug and alcohol awareness prior to department approval of the license application;

(2) Accept payments from prospective students; or

(3) Publish advertisements including the school name or upcoming class sessions.

(f) A school shall not advertise without including the school name and the school number exactly as it appears on the driver education school license.

(g) [~~(d)~~] All advertisements of a multiple classroom location or alternative delivery method shall meet the requirements in subsections (a) - (f) [~~listed above~~].

§84.81. Recordkeeping Requirements.

(a) Driver Education Schools Recordkeeping Requirements.

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

(3) The school shall maintain a written or electronic daily record of attendance for all students enrolled at the instruction site. The record shall include the information specified in this subsection.

(A) (No change.)

(B) The individual student record form (classroom) for all students, including completed, terminated, or withdrawn, shall include the following:

(i) - (iii) (No change.)

~~(iv)~~ ~~type and driver's license or permit number, if applicable, held by the student, including the expiration date and licensing state;~~]

(iv) [~~(v)~~] month, day, year, and start and end time of instruction;

(v) [~~(vi)~~] each unit of instruction;

(vi) [~~(vii)~~] grade earned for each unit, if applicable;

(vii) [~~(viii)~~] instruction hours for classroom[~~, simulators, behind-the-wheel, and observation~~];

(viii) [~~(ix)~~] initials of each instructor providing the classroom. [~~or in-car lesson.~~] The instructor's signature and license number shall appear at least once on the form. If applicable, a licensed supervising teacher, licensed driver education teacher or school owner [~~The teacher of record~~] shall sign or stamp all completed classroom instruction records;

(ix) [~~(x)~~] beginning and ending dates of the classroom phase; and

(x) [~~(xi)~~] a written certification [~~statement of assurance~~] signed by student and instructor that the record is true and correct.

(C) The individual student record form (in-car instruction) shall contain the following entries:

(i) - (iii) (No change.)

(iv) name of student; [~~and~~]

(v) driver or learner license number held by student; and

(vi) [~~(v)~~] instructor's name and license number or instructor initials (if instructor's name and license number appears at least one time on the record).

(D) - (F) (No change.)

(b) Driving Safety Schools Recordkeeping Requirements.

(1) (No change.)

(2) The course provider shall retain all student records for at least three years. A course provider shall maintain the records of the students who completed driving safety or specialized driving safety classes for the most current twelve (12) months at the course provider location. The actual driving safety or specialized driving safety comprehension test does not have to be retained; however, the test score must be in the student's records. The department [~~division director~~] may require a course provider to retain the actual test of each student for a designated period of time if deemed necessary by the department [~~division director~~] to show compliance with the legal requirements.

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

(c) (No change.)

§84.82. Student Enrollment Contracts.

(a) Driver Education Schools Enrollment Contracts.

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

(3) In addition, all driver education student enrollment contracts shall contain statements substantially as follows:

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

(D) I further realize that any grievances not resolved by the school may be forwarded to the Texas Department of Licensing and Regulation, Driver Education and Safety, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 463-9468, or electronically to: https://www.tdlr.texas.gov/help/ [~~78701~~]. The current telephone numbers [~~number~~] of the department (800-803-9202 or 512-463-6599) shall also be provided.

(4) - (8) (No change.)

(9) A driver education school shall provide a makeup policy to each student.

(b) Driving Safety Schools Enrollment Contracts.

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

(3) In addition, all driving safety school contracts shall contain statements substantially as follows.

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

(D) I further realize that any grievances not resolved by the school may be forwarded to the course provider (identify name and address) and to the Texas Department of Licensing and Regulation, Driver Education and Safety, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 463-9468, or electronically to: https://www.tdlr.texas.gov/help/ [~~78701~~]. The current telephone numbers [~~number~~] of the department (800-803-9202 or 512-463-6599) shall also be provided.

(4) - (5) (No change.)

(6) Course providers shall submit proposed or amended contracts to the department [~~division~~], and those documents shall be approved prior to use by schools.

(7) - (8) (No change.)

(c) Drug and Alcohol Awareness Schools Enrollment Contracts.

(1) (No change.)

(2) All drug and alcohol driving awareness enrollment forms shall provide students with the following information:

(A) Grievances not resolved by the school may be forwarded to the Texas Department of Licensing and Regulation, Driver Education and Safety, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 463-9468, or electronically to: https://www.tdlr.texas.gov/help/ [~~78701~~]. The current telephone numbers [~~number~~] of the department (800-803-9202 or 512-463-6599) shall also be provided.

(B) (No change.)

§84.84. Notification of Public Interest Information and Participation.

Consumers and service recipients shall be notified of the name, e-mail address, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding the Driver Education and Safety Program. The notification must appear on [~~at least one of~~] the following:

(1) each registration form, application, or written contract for services of a person regulated under this chapter; and

(2) a sign prominently displayed in the place of business of each person regulated under this chapter. [~~; or~~]

[~~(3) a bill for service provided by a person regulated under this chapter.~~]

§84.85. Statement of Assurance.

(a) Driver education schools, and department-approved course providers shall submit a Statement of Assurance as prescribed by the department to demonstrate course materials have been updated to reflect the latest changes to applicable laws.

(b) Failure to make necessary changes and submit a Statement of Assurance reflecting the changes may subject the licensee to administrative penalties and/or sanctions.

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SUBCHAPTER H. FACILITIES AND EQUIPMENT FOR DRIVER EDUCATION SCHOOL, DRIVING SAFETY SCHOOLS AND DRUG AND ALCOHOL AWARENESS SCHOOLS

16 TAC §84.90

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

§84.90. Facilities and Equipment.

(a) Each driver education, driving safety, specialized driving safety, DSY25, and drug and alcohol driving awareness school shall conduct the department approved course in a facility or facilities approved by the department, if applicable.

(b) A driver education school [~~offering any phase of driver education~~] shall not maintain a classroom facility in [~~an office in a place other than~~] a private residence[~~; and no classroom facility for driver education programs shall be located in a private residence~~].

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

(f) Each driver education, driving safety, specialized driving safety, DSY25, and drug and alcohol driving awareness school shall be provided in designated instructional areas that promote learning by ensuring that students are able to see and hear the instructor and audiovisual aids. Any facility that contains an adult-oriented business or a facility that is required to exclude patrons because of age will not be approved. Factors that will be considered in determining whether facilities promote learning include facility layout, visual and hearing distractions, and equipment functionality.

(g) - (j) (No change.)

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SUBCHAPTER I. INSPECTIONS

16 TAC §84.103

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

§84.103. AMI Driver Education School Audits.

(a) If a driver education school is conducting driver education instruction through AMI, department employees may conduct an audit of the courses offered by the school. Audits may be conducted without prior notice to the provider, and department employees and representatives may enroll and attend a course without identifying themselves as employees or representatives of the department.

(b) Department employees and representatives performing an audit may not be required to pay any fee to a provider for enrolling in or attending a course.

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SUBCHAPTER J. DRIVER EDUCATION AND DRIVING SAFETY SCHOOL CANCELLATION AND REFUND

16 TAC §84.200

STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rule.

§84.200. Cancellation and Refund Policy.

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

(c) If a student withdraws or is terminated from the course or school, a refund must be issued that corresponds to the actual instructional hours not provided.

(d) (No change.)

(e) In reference to §1001.404 of the Code, the interest rate on unpaid refunds is set at 20 percent [~~%~~].

(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.

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For further information, please call: (512) 463-3671

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SUBCHAPTER K. FEES

16 TAC §§84.300 - 84.302

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.300. Driver Education Fees.

(a) (No change.)

(b) Driver Education School Fees:

(1) The initial application fee for a primary driver education school is $500 [~~$1,000~~].

(2) The initial application fee for a branch driver education school is $500 [~~$850~~].

(3) The renewal application fee for a primary driver education school is $100 [~~$200~~].

(4) The renewal application fee for a branch driver education school is $100 [~~$200~~].

(5) The fee for a change of the physical address for [~~of~~] a driver education primary school and branch is $150 [~~$180~~].

(6) The fee for a change of name of a driver education school or to change the name of an owner is $50 [$100].

(7) If a driver education school changes ownership as defined under §84.2(6), the fee paid by the new owner is $500 [$1,000] for a primary driver education school and $500 [$850] for a branch driver education school.

(c) (No change.)

(d) Driver Education Course Fees:

(1) The application fee for approval of a traditional driver education course exclusively for adults is $200 [$500].

(2) The application fee for approval of an online driver education course exclusively for adults is $5,850 [$9,000].

(3) (No change.)

(4) The application fee for approval of a 32-hour Alternative Method of Instruction (AMI) for driver education classroom is $9,750 [$15,000].

(5) The application fee for approval of part of a 32-hour AMI for driver education classroom is $200 [$500] per instructional hour.

(6) (No change.)

(7) The fee for a DE-964 certificate of completion number is $1.00.

(8) [(7)] The fee for an ADE-1317 certificate of completion is $1.00.

(9) The fee for an ADE-1317 certificate of completion number is $1.00.

(e) (No change.)

§84.301. Driving Safety Fees.

(a) (No change.)

(b) Driving Safety School Fees:

(1) (No change.)

(2) The fee for a change of the physical address for [of] a driving safety school is $50.

(3) (No change.)

(4) If a driving safety school changes ownership as defined under §84.2(6), the fee paid by the new owner is $100 [$150].

(c) (No change.)

(d) Driving Safety Course Provider Fees:

(1) The initial application fee for a course provider is $500 [$2,000].

(2) The annual renewal application fee for a course provider is $100 [$200].

(3) (No change.)

(4) The fee for a change of name of a course provider or name of owner is $50 [$100].

(5) If a driving safety course provider changes ownership as defined under §84.2(6), the fee paid by the new owner is $500 [$2,000].

(e) Driving Safety Course Fees:

(1) The fee for a driving safety course approval is $5,850 [$9,000].

(2) The fee for a specialized driving safety course approval is $5,850 [$9,000].

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

(f) (No change.)

§84.302. Drug and Alcohol Driving Awareness Fees.

(a) (No change.)

(b) Drug and Alcohol Driving Awareness Schools:

(1) The initial application fee for a drug and alcohol driving awareness school is $100 [$150].

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

(4) If a drug and alcohol driving awareness school changes ownership as defined under §84.2(6), the fee paid by the new owner is $100 [$150].

(c) Drug and Alcohol Driving Awareness Programs:

(1) The fee for a drug and alcohol driving awareness program approval is $5,850 [$9,000].

(2) The fee for a drug and alcohol driving awareness program alternative delivery method approval is $5,850 [$9,000].

(3) (No change.)

(d) Drug and Alcohol Driving Awareness Instructors:

(1) The initial application fee (including processing and licensing fees) for a drug and alcohol driving awareness instructor license is $50 [$75].

(2) (No change.)

(e) Other Fees:

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

(5) The fee for the Parent Taught Driver Education Guide Form is $20.

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

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.507

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters

and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.500. Courses of Instruction for Driver Education Schools.

(a) (No change.)

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval. For courses offered in a language other than English, the course materials shall be accompanied by a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such course materials are subject to the approval of the department prior to its use by a driver education school.

(1) Minor and adult driver education course.

(A) - (F) (No change.)

(G) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI may be used as part of the required 32 hours of traditional classroom instruction. [~~Instructors shall refrain from using any type of media for an extended period of time and should only use videos for no more than 640 minutes. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.~~]

(H) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25 percent [~~25%~~] of the course and shall be presented to the entire class simultaneously.

(I) - (K) (No change.)

(L) When a student changes schools, the school must follow the current transfer policy developed by the department [~~and Texas Department of Public Safety (DPS)~~].

(M) - (O) (No change.)

(P) All in-car instruction provided by the school shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. [~~The division may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.~~]

(Q) (No change.)

(R) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one [~~1~~] hour of behind-the-wheel instruction and one [~~1~~] hour of in-car observation. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one [~~1~~] hour of behind-the-wheel instruction and one [~~1~~] hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction.

(S) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws.

[~~(T) A student issued a DE-964 under the block and concurrent programs must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not complete the required hours of instruction. The DPS may then revoke the student's instruction permit.~~]

(T) [~~(U)~~] Each school owner that teaches driver education courses shall collect adequate student data to enable the department to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The department may determine a level of effectiveness that serves the purposes of the Code.

(U) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. A licensed supervising teacher, licensed driver education teacher or school owner shall sign or stamp all completed classroom instruction records.

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The department may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) (No change.)

(ii) Instructor license required. Students shall receive classroom instruction from a licensed supervising teacher or [~~,~~] driver education teacher[~~, supervising teaching assistant-full or teaching assistant-full~~].

(iii) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

(I) - (II) (No change.)

(III) Right-of-way--minimum of 45 [~~50~~] minutes. Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

(IV) (No change.)

(V) Controlling traffic flow--minimum of 35 [~~40~~] minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

(VI) Alcohol and other drugs--minimum of 40 [~~50~~] minutes. Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero-tolerance driving and lifestyle practices related to the use of alcohol and other drugs and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

(VII) Cooperating with other roadway users--minimum of 50 [~~20~~] minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations, and safely operating a vehicle near oversized or overweight vehicles.

(VIII) Managing risk--minimum of 40 [~~50~~] minutes. Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision making, risk taking, im-

paired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

(IX) (No change.)

(iv) Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.

(I) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. A licensed supervising teacher, licensed driver education teacher or school owner [~~The teacher of record~~] shall sign or stamp all completed classroom instruction records [~~provided by a supervising teaching assistant-full or teaching assistant-full~~].

(II) (No change.)

(III) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course shall not exceed 150 [~~120~~] minutes of instruction. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

(IV) - (VIII) (No change.)

(IX) Students shall not receive a driver education certificate of completion unless that student receives a grade of at least 70 percent [~~70%~~] on the highway signs examination and at least 70 percent [~~70%~~] on the traffic laws examination as required under Texas Transportation Code, §521.161.

(X) (No change.)

(B) Online approval process. The department may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) - (ii) (No change.)

(iii) School license required. A person or entity offering an online driver education course exclusively for adults must hold a driver education school license.

(I) (No change.)

(II) Students shall receive classroom instruction from a licensed supervising teacher or [~~,~~] driver education teacher[~~, or teaching assistant-full~~].

(iv) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code.

(I) (No change.)

(II) Length of course. The course must be six [6] hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(III) - (V) (No change.)

(VI) Minimum content. The online course shall present sufficient content so that it would take a student 360 minutes to complete the course. In order to demonstrate that the online course contains sufficient minutes of instruction, the online course shall use the following methods.

(-a-) (No change.)

(-b-) Multimedia presentations. For multimedia presentation, the online course shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 150 [~~120~~] minutes.

(-c-) (No change.)

(-d-) Time allotment for questions. The online course may allocate up to 90 [~~60~~] seconds for questions presented over the Internet and 90 [~~60~~] seconds for questions presented by telephone.

(-e-) - (-f-) (No change.)

(v) Personal validation. The online course shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(I) School-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 90 [~~60~~] seconds.

(-b-) (No change.)

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30 percent [~~30%~~] of the personal validation questions.

(-d-) (No change.)

(II) Third party data method. The online course shall ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 90 [~~sixty (60)~~] seconds.

(-b-) (No change.)

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30 percent [~~30%~~] of the personal validation questions.

(-d-) (No change.)

(vi) Content validation. The online course shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(I) (No change.)

(II) Testing the student's participation in multimedia presentations. The online course shall ask at least one [~~1~~] course validation question following each multimedia clip of more than 180 [~~sixty (60)~~] seconds.

(-a-) Test bank. For each multimedia presentation that exceeds 180 [~~sixty (60)~~] seconds, the online course shall have a test bank of at least four [~~(4)~~] questions.

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

(III) - (IV) (No change.)

(vii) Retest the student. If the student misses more than 30 percent [~~30%~~] of the questions asked on an examination, the online course shall retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If

the student fails the comprehensive final examination three times, the student shall fail the course.

(viii) - (xi) (No change.)

(xii) Access to instructor and technical assistance. The school must establish hours that the student may access the instructor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

(xiii) Additional requirements for online courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(I) - (III) (No change.)

(IV) Course identification. All online courses shall display the driver education school name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(V) [~~IV~~] Domain names. Each school offering an online course must offer that online course from a single domain. [~~The online course may accept students that are redirected to the online course domain, as long as the school license number appears on the source that redirects the student to the online course domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the online course before the student begins the registration process, supplies any information, or pays for the course.~~]

(VI) A driver education school offering an online course may accept students redirected from a website as long as the student is redirected to the webpage that clearly identifies the name and license number of the school offering the online course. This information shall be visible before and during the student registration and course payment processes.

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

(c) This subsection contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, including current reference to the law, driving procedures, current instructor application and renewal processes, then the department [~~division~~] may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from the department. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(A) Six-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to six [6] semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) - (ii) (No change.)

(B) Nine-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to nine [9] semester hours or 135 clock hours of driver and traffic safety education instructor training and shall include:

(i) - (ii) (No change.)

(C) Supervising instructor development course. The supervising driver education instructor development program instructional objectives must be equivalent to six [6] semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) (No change.)

(ii) Supervising Instructor I--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) - (VIII) (No change.)

(IX) classroom progress examination for Supervising Instructor I. [~~; and~~]

(iii) (No change.)

(2) Prior to enrolling as a trainee [~~a student~~] in a driver education instructor development course, the school owner or representative must obtain proof that the enrollee [~~student~~] has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate the [~~a~~] current official driving record from the enrollee [~~student~~] for the preceding 36-month period prior to enrollment. The school must use the standards set forth in §84.50(b)(3) [~~of this Chapter~~] when determining the qualifications for a trainee's [~~a student's~~] enrollment.

(3) Instruction records shall be maintained by the school for each instructor trainee and shall be available for inspection by authorized department [~~division~~] representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All instructor trainee [~~student~~] instruction records submitted for the approved instructor development courses shall be original documents.

(5) A [~~properly~~] licensed supervising [~~driver education~~] teacher [~~or supervising teaching assistant-full~~] shall teach the [~~6-semester-hour, 9-semester-hour, and~~] instructor development courses. The supervising teacher may allow a driver education teacher, [~~teaching assistant-full,~~] or teaching assistant to provide training under the direction of the supervising teacher in areas appropriate for their level of certification and/or licensure. [~~The supervising teacher is responsible for certifying all instruction conducted by the driver education teacher, teaching assistant-full, or teaching assistant, including independent study and research assignments, which shall not exceed 25% of the total training program time.~~]

(6) The supervising teacher is responsible for certifying all independent study and research assignments that shall not exceed 25 percent of the total training program time.

(d) This subsection contains requirements for driver education continuing education courses.

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

(3) A continuing education course may be approved if the department determines that:

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

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The department [~~division~~] may request evidence of the individuals' experience or expertise.

(4) (No change.)

(e) (No change.)

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the department [~~division~~] with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the department [~~division~~] shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department [~~division~~] for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department [~~division~~], the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) - (i) (No change.)

§84.501. Driver Education Course Alternative Method of Instruction.

(a) Approval process. The department may approve an alternative method whereby a driver education school is approved to teach all or part of the classroom portion of a [~~an approved~~] driver education course by an alternative method of instruction (AMI) that does not require students to be present in a classroom that meets the following requirements.

(1) Standards for approval. The department may approve a driver education school to teach all or part of the classroom portion of a [~~an approved~~] driver education course by an AMI that does not require students to be present in a classroom only if:

(A) - (E) (No change.)

(2) Application. The school shall submit a completed AMI application along with the appropriate fee. The application for AMI approval shall be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the [~~school's approved~~] curriculum as aligned with the Program of Organized Instruction for Driver Education and Traffic Safety.

(3) (No change.)

(b) Course content. The AMI must deliver the same topics, sequence, and course content as the school's approved traditional driver education course.

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

(4) Student breaks. The AMI is allowed five [~~5~~] minutes of break per instructional hour for all phases, for a total of 160 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(5) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 32 hours (1,920 minutes) to complete the course. A course that demonstrates that it contains 1,760 minutes of instructional content shall mandate that students take 160 minutes of break time or provide additional educational content for a total of 1,920 minutes (32 hours). In order to demonstrate that the AMI contains sufficient content, the AMI shall use the following methods.

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

(D) Examinations. The school owner may allocate up to 90 [~~60~~] seconds for questions presented over the Internet and 90 [~~30~~] seconds for questions presented by telephone.

(E) - (F) (No change.)

(6) Academic integrity. The academic integrity of the AMI for a classroom driver education course shall include:

(A) - (H) (No change.)

(I) if online, clearly stated academic integrity and Internet etiquette [~~netiquette (Internet etiquette)~~] expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(7) (No change.)

(c) Personal validation. The AMI shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(1) School initiated method. Upon approval by the department, the AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course shall ask a minimum of 60 [~~sixty (60)~~] personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within 90 [~~sixty (60)~~] seconds for questions presented over the Internet and 90 [~~30~~] seconds for questions presented by telephone.

(B) (No change.)

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30 percent [~~30%~~] of the personal validation questions.

(D) (No change.)

(d) Content validation. The AMI shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) (No change.)

(2) Testing the student's participation in multimedia presentations. The AMI shall ask at least one [~~1~~] course validation question following each multimedia clip of more than 180 [~~sixty (60)~~] seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 [~~sixty (60)~~] seconds, the AMI shall have a test bank of at least four [~~4~~] questions.

(B) - (D) (No change.)

(3) Mastery of course content. The AMI shall test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions shall include at least:

(i) 20 questions [~~from~~] each from [~~of~~] modules 1 and 8 [~~1, 8, and 12~~] listed in the program of organized instruction for driver education and traffic safety; and

(ii) 10 questions [~~from~~] each from [~~of~~] the remaining modules.

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

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30 percent [~~30%~~] of the questions asked on a module examination, the AMI shall require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI shall again test the student's mastery of the material. The AMI shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30 percent [~~30%~~] of the questions asked on the final examination, the AMI shall retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) (No change.)

(f) Additional requirements for AMI [~~Internet~~] courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(1) Course identification. All AMI courses shall display the driver education school name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driver education school offering an AMI course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the name and license number of the school offering the AMI course. This information shall be visible before and during the student registration and course payment processes.

[~~(1) An AMI may allow the student re-entry into the course by username and password authentication or other means that are equally secure.~~]

[~~(2) The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.~~]

[~~(3) The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.~~]

[~~(4) If the AMI presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.~~]

[~~(5) Each school offering an AMI must offer that AMI from a single domain. The AMI may accept students that are redirected to the AMI's domain, as long as the school license number appears on the source that redirects the student to the AMI domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the AMI before the student begins the registration process, supplies any information, or pays for the course.~~]

[~~(6) Hardware, web browser, and software requirements must be specified.~~]

[~~(7) Prerequisite skills in the use of technology must be identified.~~]

[~~(8) Appropriate content-specific tools and software must be used.~~]

[~~(9) Universal design principles that ensure access for all students must be used.~~]

[~~(10) Online textbooks and other instructional materials used in an AMI must meet state standards.~~]

[~~(11) The school must offer the course instructor, school director, and school owner assistance with technical support and course management.~~]

(g) Additional requirements for video courses.

(1) (No change.)

(2) Video requirement. The video course shall include between 60 and 640 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 1,760 minutes of required instruction shall be video material that is relevant to required course instruction content.

(A) A video AMI shall ask, at a minimum, at least one [~~1~~] course validation question for each multimedia clip of more than 180 [~~sixty (60)~~] seconds.

(B) A video AMI shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 [~~sixty (60)~~] seconds.

(h) - (j) (No change.)

(k) Renewal of AMI approval. The AMI approval must be renewed and updated to ensure timeliness every even-numbered year. [~~two years. The renewal document due date shall be March 1, 2012, and every two years thereafter.~~]

(1) For approval, the school shall update all the statistical data, references to law, and traffic safety methodology with the latest available data.[~~:~~]

[~~(A) update all the statistical data, references to law, and traffic safety methodology with the latest available data; and~~]

[~~(B) submit a statement of assurance that the AMI has been updated to reflect the latest applicable laws and statistics.~~]

[~~(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the AMI approval.~~]

(2) [~~(3)~~] The department may alter the due date of the renewal documents by giving the approved AMI six months notice. The department may alter the due date in order to ensure that the AMI is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. The school must establish hours that the student may access the instructor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor and technical assistance during the specified hours.

(m) (No change.)

(n) Required training. The instructor must meet the professional teaching standard established by a state licensing agency or have academic credentials in the field in which he or she is teaching and must have been trained to teach the AMI classroom driver education course. Each instructor of an AMI classroom driver education course offered by a driver education school must:

(1) have a ST, or DET[~~, STA-F, or TA-F~~] driver education instructor license; and

(2) (No change.)

§84.502. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504, (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14) [~~(16) of this chapter~~].

(1) Driving safety courses.

(A) (No change.)

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a driver safety course [~~a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, final examination, and evaluation in the proposed language~~]. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) - (iv) (No change.)

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 165 [~~150~~] minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The department [~~division~~] may make exceptions to this requirement on an individual basis;

(vii) - (ix) (No change.)

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D). A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department [~~division~~].

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) - (vii) (No change.)

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent [~~70%~~] on the final examination.

(ix) - (x) (No change.)

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following.

(i) (No change.)

(ii) The traffic safety problem--minimum of 10 [~~15~~] minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) - (III) (No change.)

(iii) Factors influencing driver performance--minimum of 10 [~~20~~] minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) - (V) (No change.)

(iv) Traffic laws and procedures--minimum of 50 [~~30~~] minutes (instructional objectives--to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) - (XVI) (No change.)

(v) Special skills for difficult driving environments--minimum of 15 [~~20~~] minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) - (V) (No change.)

(vi) Physical forces that influence driver control--minimum of 10 [~~15~~] minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) - (III) (No change.)

(vii) (No change.)

(viii) Defensive driving strategies--minimum of 30 [~~40~~] minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) - (XI) (No change.)

(ix) Driving emergencies--minimum of 20 [~~40~~] minutes (instructional objective--to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) - (III) (No change.)

(x) - (xii) (No change.)

(xiii) The remaining 65 [~~30~~] minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit, as part of the application, an instructor training guide that has [~~is bound or hole-punched and placed in a binder and that has a cover and~~] a table of contents and is submitted in the format or manner as prescribed by the department. The guide shall include the following:

(i) - (iii) (No change.)

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two [~~2~~] questions from the required units set forth in subparagraph (D)(ii)-(xi), for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions but may facilitate alternative testing. Instructors may not be certified, or students given credit for the driving safety course unless they score 70 percent [~~70%~~] or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent [~~70%~~] on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) (No change.)

(H) Renewal of course approval. The course approval must be renewed every even-numbered year. [~~two years. The renewal document due date shall be March 1 of every even numbered calendar year.~~]

(i) (No change.)

~~(ii)~~ ~~The course owner shall submit a Statement of Assurance stating that the course has been updated to reflect the latest applicable laws and statistics.~~]

~~(iii)~~ ~~Failure to make necessary changes or to submit a Statement of Assurance documenting those changes shall be cause for revocation of the course approval.~~]

(ii) [~~(iv)~~] The department [~~commissioner~~] may alter the due date of the renewal documents by giving the approved course six months' notice. The department [~~commissioner~~] may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) (No change.)

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department [~~division~~] representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) (No change.)

(D) Driving safety instructor development courses including the practical-teaching portion of the instructor development course shall [~~may~~] be offered at approved classroom facilities of a licensed school [~~which is approved to offer the driving safety course being taught~~]. A [~~properly~~] licensed instructor trainer shall present the course.

(E) (No change.)

~~[(F) The driving safety course provider shall submit dates of instructor development course offerings for the 16-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.~~]

(3) Continuing education course [~~courses~~].

(A) For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements

set forth in this subchapter, the department may grant an approval. Course providers desiring to provide a driving safety continuing education course shall provide an application for approval that shall be in compliance with this section.

(B) [~~(A)~~] Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(C) [~~(B)~~] The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;

(ii) the subject of each unit;

(iii) the instructional objectives of each unit;

(iv) time to be dedicated to each unit;

(v) instructional resources for each unit, including names or titles of presenters and facilitators;

(vi) any information that the department mandates to promote the quality of the education being provided; and

(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(D) [~~(C)~~] A continuing education course may be approved if the department determines that:

(i) the course is designed to enhance the instructional skills, methods, or knowledge of the driving safety instructor;

(ii) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(iii) the course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division;

(iv) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and

(v) any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the department [~~division~~] and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the department [~~division~~] shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department [~~division~~] for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department [~~division~~], the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department [~~commissioner~~] shall notify the applicant, setting forth the reasons for denial in writing.

(e) (No change.)

§84.503. Specialized Driving Safety Courses of Instruction.

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504 [~~of this title~~] (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14).

(1) Specialized driving safety courses.

(A) (No change.)

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a specialized driver safety course [~~copy of the student verification of course completion document and/or contract, student instructional materials, final examination, and evaluation in the proposed language~~]. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) - (ix) (No change.)

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D). A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department [~~division~~].

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) - (vii) (No change.)

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent [~~70%~~] on the final examination.

(ix) - (x) (No change.)

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, four hours of instruction that encourages the use of child passenger safety seat systems and the

wearing of seat belts, etc., and materials adequate to assure the student masters the following.

(i) - (ii) (No change.)

(iii) Factors influencing driver performance--minimum of 25 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) - (V) (No change.)

(iv) Physical forces that influence driver control--minimum of 10 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) - (III) (No change.)

(v) Perceptual skills needed for driving--minimum of 10 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) - (VI) (No change.)

(vi) Occupant protection equipment--minimum of 35 [~~25~~] minutes (instructional objective--to identify the improvements and technological advances in automotive design and construction). Instruction shall address the following topics:

(I) - (IX) (No change.)

(vii) Occupant restraint systems--minimum of 60 [~~40~~] minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) - (V) (No change.)

(viii) (No change.)

(ix) The remaining 10 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course [~~Comprehensive examination--minimum of five minutes (this shall be the last unit of instruction)~~].

(x) Comprehensive examination--minimum of five minutes (this shall be the last unit of instruction) [~~The remaining 30 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course~~].

(E) (No change.)

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70 percent [~~70%~~] or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent [~~70%~~] on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) (No change.)

(2) Specialized driving safety instructor development courses.

(A) (No change.)

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department [~~division~~] representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) (No change.)

(D) Specialized driving safety instructor development courses including the practical-teaching portion of the instructor development course shall [~~may~~] be offered at approved classroom facilities of a licensed school [~~which is approved to offer the specialized course being taught~~]. A [~~properly~~] licensed instructor trainer shall present the course.

(E) (No change.)

[~~(F) The course provider shall submit dates of instructor development course offerings for the 16-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the specialized driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.~~]

(3) Continuing education courses.

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

(C) A continuing education course may be approved if the department determines that:

(i) - (ii) (No change.)

(iii) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the department [~~division~~];

(iv) (No change.)

(v) the department [~~division~~] determines that any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the department [~~division~~] and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the department [~~division~~] shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department [~~division~~] for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department [~~division~~], the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department [~~commissioner~~] shall notify the applicant, setting forth the reasons for denial in writing.

(e) (No change.)

§84.504. Driving Safety Course Alternative Delivery Method.

(a) Approval process. The department may approve an alternative delivery method (ADM) that delivers an approved driving safety course or an approved specialized driving course and meets the following requirements.

(1) Standards for approval. The department [~~commissioner~~] may approve an ADM for an approved driving safety course or a specialized driving safety course and waive any rules to accomplish this approval if the ADM delivers an approved course in a manner that is at least as secure as a traditional classroom. ADMs that meet the requirements outlined in subsections (b)-(h), shall receive ADM approval.

(2) - (5) (No change.)

(b) Course content. The ADM must deliver the same topics and course content as the approved course.

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

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the course. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

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

(D) Examinations. The course provider may allocate up to 90 seconds for questions presented over the Internet and 90 [~~30~~] seconds for questions presented by telephone.

(E) - (F) (No change.)

(6) (No change.)

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the course. The personal validation system shall incorporate the following requirements.

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

(3) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 [~~30~~] seconds for questions presented by telephone.

(4) - (8) (No change.)

(d) Content validation. The ADM shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) (No change.)

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one [~~1~~] course validation question following each multimedia clip of more than 180 [~~60~~] seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 [~~60~~] seconds, the ADM shall have a test bank of at least four [4] questions.

(B) - (D) (No change.)

(3) (No change.)

(4) Repeat and retest options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30 percent [~~30%~~] of the questions asked on an examination, the ADM shall require that the student take the unit again. All timers shall be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM shall again test the student's mastery of the material. The ADM shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the student. If the student misses more than 30 percent [~~30%~~] of the questions asked on an examination, the ADM shall retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit but may be allowed to do so prior to retaking the examination. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) (No change.)

(f) Additional requirements for ADM [~~Internet~~] courses. Courses delivered via the Internet shall also comply with the following requirements.

(1) Course identification. All ADM courses shall display the driving safety school name, course provider name and license numbers for each assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driving safety school offering an ADM course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the names and license numbers of the school and course provider offering the ADM. This information shall be visible before and during the student registration and course payment processes.

[~~(1) Re-entry into the course. An ADM may allow the student re-entry into the course by username and password authentication~~

or other means that are as secure as username and password authentication.]

[(2) Navigation. The student shall be able to logically navigate through the course. The student shall be allowed to freely browse previously completed material.]

[(3) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.]

[(4) Video transcripts. If the ADM presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.]

(3) [(5)] Domain names. Each school offering an ADM must offer that ADM from a single domain. [The ADM may accept students that are redirected to the ADM's domain, as long as the student is redirected to a webpage that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course. Subdomains of the ADM's single domain may also accept students as long as the subdomain is registered to and hosted by the ADM and clearly identifies the official course provider, school name, and department registration number.]

[(6) Course identification. All ADMs presented over the Internet shall display the school name and school number assigned by the department as well as the course provider name and course provider number assigned by the department in the top left-hand portion on the entity's homepage and the registration page used by the student to pay any monies, provide any personal information, and enroll.]

(g) Additional requirements for video courses.

(1) (No change.)

(2) Video requirement. In order to meet the video requirement of §84.502(a)(1)(B)(v), the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to the [1 of the 11] required topics and produced [by the ADM owner, course owner, or course provider] specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one [1] course validation question for each multimedia clip of more than 180 [60] seconds at the end of each major segment (chapter) of the ADM.

(B) (No change.)

(h) - (j) (No change.)

(k) Renewal of ADM approval. The ADM approval must be renewed every even-numbered year. [two years. The renewal document due date shall be March 1 of every even numbered calendar year.]

(1) For approval, the course provider shall update all the statistical data and references to law with the latest available data.[:]

[(A) update all the statistical data and references to law with the latest available data; and]

[(B) submit a statement of assurance that the ADM has been updated to reflect the latest applicable laws and statistics.]

[(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the ADM approval.]

(2) [(3)] The department [commissioner] may alter the due date of the renewal documents by giving the approved ADM six months' notice. The department [commissioner] may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. The school must establish hours that the student may access the instructor and for technical assistance. With the exception of circumstances beyond the control of the school, the student shall have [adequate] access [(on the average, within two minutes)] to the [both a licensed] instructor and [telephonic] technical assistance during the specified hours [(help desk) throughout the course such that the flow of instructional information is not delayed].

§84.505. Drug and Alcohol Driving Awareness Programs of Instruction.

(a) This section contains requirements for drug and alcohol driving awareness programs and instructor development programs. For each program, the following curriculum documents and materials are required to be submitted as part of the application for approval. All program content shall be delivered under the direct observation of a licensed instructor. Programs of instruction shall not be approved which contain language that a reasonable person would consider inappropriate. Any changes and updates to a program shall be submitted and approved prior to being offered.

(1) Drug and alcohol driving awareness programs.

(A) (No change.)

(B) Drug and alcohol driving awareness program content guides. A program content guide is a description of the content of the program and the techniques of instruction that will be used to present the program. For programs offered in languages other than English, the course provider shall provide a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to the approval of the department prior to its use in a drug and alcohol driving awareness course. [, along with the documentation specified in clauses (i)-(ix), a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, and post-program exam in the proposed language accompanied by a statement from a translator with current credentials from the American Translators Association or the National Association of Judicial Interpreters and Translators that the materials are the same in both English and the other language. In lieu of the credentials specified in this subparagraph, a translator's credentials shall be presented to the department for approval with the final determination based solely on the department's interpretation.] To be approved, each course provider shall submit as part of the application a program content guide that includes the following:

(i) - (iv) (No change.)

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the program; and the furniture deemed necessary to accommodate the students in the program, such as tables, chairs, and other furnishings. The program shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 180 [150] minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) (No change.)

(vii) written or printed materials that shall be provided for use by each student as a guide to the program. The executive director [~~division director~~] may make exceptions to this requirement on an individual basis;

(viii) - (ix) (No change.)

(C) Program and time management. Approved drug and alcohol driving awareness programs shall be presented in compliance with the following guidelines.

(i) - (ii) (No change.)

(iii) 60 [~~Sixty~~] minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum program content. All break periods shall be provided after instruction has begun and before the post-program exam.

(iv) - (vi) (No change.)

(vii) Students shall not receive a certificate of program completion unless that student received a grade of at least 70 percent [~~70%~~] on the post-program exam.

(viii) - (x) (No change.)

(D) - (E) (No change.)

(F) Exams. Each course provider shall submit for approval, as part of the application, pre- and post-program exams designed to measure the knowledge of students at the completion of the drug and alcohol driving awareness program. The post-program exam for each drug and alcohol driving awareness program must contain at least 20 questions. A minimum of two [~~2~~] questions shall be drawn from the required units set forth in subparagraph (D)(iii)-(vii) of this paragraph. The post-program final exam questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the post-program exam questions but may facilitate alternative testing. Instructors may not certify or give students credit for the drug and alcohol driving awareness program unless they score 70 percent [~~70%~~] or more on the post-program exam. The program content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent [~~70%~~] on the post-program exam. The course provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Exam questions may be short answer, multiple choice, essay, or a combination of these forms.

(2) Instructor development programs.

(A) (No change.)

(B) Instruction records shall be maintained by the course provider and licensed instructor for each instructor trainee and shall be available for inspection by authorized department [~~division~~] representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include unit, pre- and post-program exam grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training program, the instructor trainer conducting the training will certify a copy of the instruction record for attachment to the trainee's application for licensing.

(C) (No change.)

(D) Instructor development programs including the practical-teaching portion of the instructor development course shall [~~may~~] be offered at approved classroom facilities of a licensed school [~~which is approved to offer the drug and alcohol driving awareness program being taught~~]. A [~~properly~~] licensed instructor shall present the program.

(b) Schools applying for approval of additional drug and alcohol driving awareness programs after the original approval has been granted shall submit the documents designated by the department [~~division director~~] with the appropriate fee. Programs shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional program shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved program is discontinued, the department [~~division director~~] shall be notified within five working days of discontinuance. Any program discontinued shall be removed from the list of approved programs.

(d) If, upon review and consideration of an original, renewal, or amended application for drug and alcohol driving awareness program approval, the department determines that the applicant does not meet the legal requirements, the department [~~commissioner~~] shall notify the applicant, setting forth the reasons for denial in writing.

(e) (No change.)

§84.506. Drug and Alcohol Driving Awareness Programs Alternative Delivery Method.

(a) Approval process. The department may approve an alternative delivery method (ADM) that delivers an approved drug and alcohol driving awareness program and meets the following requirements.

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

(6) Course provider responsibility. The day-to-day operations of an ADM are the responsibility of the course provider that owns the curriculum. A course provider may offer an ADM through a school that is not owned and operated by the course provider only with approval of the executive [~~division~~] director. By accepting such approval, the course provider that offers the curriculum through a licensed drug and alcohol and driving awareness school also accepts responsibility for all compliance issues that arise as a result of the operation of the ADM.

(b) Program content. The ADM must deliver the same topics and program content as the approved course.

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

(5) Minimum content. The ADM shall present sufficient content so that it would take a student 300 minutes to complete the program. In order to demonstrate that the ADM contains sufficient content, the ADM shall use the following methods.

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

(D) Exams. The course provider may allocate up to 90 [~~45~~] seconds for questions presented over the Internet and 90 [~~30~~] seconds for questions presented by telephone.

(E) - (F) (No change.)

(6) (No change.)

(c) Personal validation. The ADM shall maintain a system to validate the identity of the person taking the program. The personal validation system shall incorporate the following requirements.

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

(3) Time to respond. The student must correctly answer the personal validation question within 90 [45] seconds for questions presented over the Internet and 90 [30] seconds for questions presented by telephone.

(4) (No change.)

(5) Exclusion from the course. The ADM shall exclude the student from the program after the student has incorrectly answered more than 30 [20] percent of the personal validation questions.

(6) - (8) (No change.)

(d) Program validation. The ADM shall incorporate a program content validation process that verifies student participation and comprehension of program material, including the following.

(1) (No change.)

(2) Testing the student's participation in multimedia presentations. The ADM shall ask at least one program validation question following each multimedia clip of more than 180 [60] seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 [60] seconds, the ADM shall have a test bank of at least four questions.

(B) - (D) (No change.)

(3) (No change.)

(e) (No change.)

(f) Additional requirements for ADM [Internet] programs. Programs delivered via the Internet shall also comply with the following requirements.

(1) Course identification. All ADM courses shall display the drug and alcohol driving awareness school name, course provider name and license numbers for each assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A drug and alcohol driving awareness school offering an ADM course may accept students redirected from another website as long as the student is redirected to the webpage that clearly identifies the names and license numbers of the school and course provider offering the ADM. This information shall be visible before and during the student registration and course payment processes.

[(1) Re-entry into the program. An ADM may allow the student re-entry into the program by username and password authentication or other means that are as secure as username and password authentication.]

[(2) Navigation. The student shall be able to logically navigate through the program. The student shall be allowed to freely browse previously completed material.]

[(3) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.]

[(4) Video transcripts. If the ADM presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.]

(3) [(5)] Domain names. Each school offering an ADM must offer that ADM from a single domain. [The ADM may accept students that are redirected to the ADM's domain, as long as the student is redirected to a web page that clearly identifies the course provider and school offering the ADM before the student begins the registration process, supplies any information, or pays for the course. Subdomains of the ADM's single domain may also accept students as long as the subdomain is registered to and hosted by the ADM and clearly identifies the official course provider, school name, and the department registration number.]

(4) [(6)] ADM identification. All ADMs presented over the Internet shall display the school name and school number assigned by the department as well as the course provider name and course provider number assigned by the department on the homepage and the registration page of the entity to which the student pays any monies, provides any personal information, and in which the student enrolls.

(g) Additional requirements for video programs.

(1) (No change.)

(2) Video requirement. In order to meet the video requirement of §84.505(a)(1)(B)(v), the video course shall include between 60 and 150 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction shall be video material that is relevant to one of the five substantive required topics and produced by the ADM owner, course owner, or course provider specifically for the ADM.

(A) A video ADM shall ask, at a minimum, at least one program validation question for each multimedia clip of more than 180 [60] seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 [60] seconds presented during the ADM.

(h) - (j) (No change.)

(k) Renewal of ADM approval. The ADM approval must be renewed every even-numbered year. [two years. The renewal document due date shall be March 1, 2012, and every two years thereafter.]

(1) For approval, the course provider shall update all the statistical data and references to law with the latest available data.[:]

[(A) update all the statistical data and references to law with the latest available data; and]

[(B) submit a statement of assurance saying that the ADM has been updated to reflect the latest applicable laws and statistics.]

[(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the ADM approval.]

(2) [(3)] The department [commissioner] may alter the due date of the renewal documents by giving the approved ADM six months' notice. The department [commissioner] may alter the due date in order to ensure that the ADM is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor and technical assistance. With the exception of circumstances beyond the control of the school, the student shall have adequate access [(on the average, within two minutes)] to both a licensed instructor and [telephonic] technical assistance (help desk) throughout the program such that the flow of instructional information is not delayed.

§84.507. Driving Safety Course for Drivers Younger than 25 Years of Age.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required

to be submitted as part of the application for approval. All course content shall be delivered under the direct observation of a licensed instructor. Alternative Delivery Methods will not be approved for this type of driving safety course. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive course as defined in §84.2(14).

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens of this state; implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act (Senate Bill 30, 85th Regular Legislature); the proper use of child passenger safety seat systems; safely operating a vehicle near oversized or overweight vehicles, increasing awareness of the dangers of driving under the influence of alcohol and drugs, reducing traffic violations; reducing traffic-related injuries and deaths for drivers younger than 25 years of age, and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, final examination, and evaluation in the proposed language. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F) Examinations;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 120 minutes of the 240 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The department may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D). A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) The course shall be a four-hour (240 minutes) live, behavioral-based interactive course that focuses on issues specific to drivers younger than 25 years of age and shall teach the driver that poor behavioral choices made behind the wheel often result in unintended consequences and shall help the driver understand the responsibility placed upon each driver to conform his or her behavior and conduct for the benefit of the driver, other drivers and pedestrians.

(ii) All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iii) Administrative procedures such as enrollment shall not be included in the 240 minutes of the course.

(iv) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(v) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(vi) There must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 30 students.

(vii) The driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following.

(i) Course introduction (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course, emergency procedures and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) Statistics related to young drivers-(instructional objective--to review key statistics about young drivers). Instruction shall address the following topics:

(I) high rate of motor vehicle accidents and fatalities for drivers younger than 25 years of age;

(II) speed related crashed involving young drivers;

(III) occupant fatalities involving safety belts;

(IV) driving at night,

(V) using a wireless communication device while operating a vehicle;

(VI) distracted driving;

(VII) failure to yield the right-of-way; and

(VIII) impaired driving from one or more of the following factors:

(-a-) alcohol;
(-b-) drugs; or
(-c-) fatigue.

(iii) The traffic safety problem (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death and injuries resulting from motor vehicle crashes in Texas by person younger than 25 years of age;

(III) the top five contributing factors of motor vehicle crashes in Texas as identified by the Texas Department of Transportation; and

(IV) state traffic laws.

(iv) Occupant restraints and protective equipment-(instructional objective--to instill and reinforce the concept that passenger safety is a key responsibility of every driver). Instruction shall address the following topics:

(I) legal aspects of passenger safety;

(II) driver responsibility;

(III) three stages of a collision;

(IV) risks associated with driving without proper restraints; and

(V) proper use of child passenger safety seat systems.

(v) Dangers of Speeding -(instructional objective--to review the key facts about the negative impact of speeding). Instruction shall address the following topics:

(I) speeding and reaction time;

(II) speeding and vehicle stopping distances;

(III) speeding as a factor in traffic fatalities involving young drivers;

(IV) state laws on speed limit and other posted signs; and

(V) speeding and road conditions.

(vi) Right of way-(instructional objective--to help the participant understand that right of way refers to a vehicle movement and not a specific driver). Instruction shall address the following topics:

(I) navigating intersections;

(II) navigating railroad crossings;

(III) changing lanes;

(IV) rates of traffic related injuries involving young drivers;

(V) delayed acceleration; and

(VI) state traffic laws.

(vii) Traffic stops-(Texas Community Safety Education Act).

(viii) Distracted driving (instructional objective--to help the participant understand that high-risk behaviors and dangers when driving distracted). Instruction shall address the following topics:

(I) manual and visual distractions;

(II) cognitive distractions;

(III) risks associated with distracted driving; and

(IV) driver and passenger responsibilities.

(ix) Impaired driving-fatigue (instructional objective--to help the participant understand that high-risk behaviors and dangers when driving fatigued). Instruction shall address the following topics:

(I) what is impairment;

(II) recognizing and responding to high-risk behaviors and dangers when driving fatigued; and

(III) impacts of fatigue on judgment, awareness and reaction times.

(x) Impaired driving-drugs and alcohol (instructional objective--to help the participant understand that high-risk behaviors and dangers when driving impaired by drugs and alcohol). Instruction shall address the following topics:

(I) synergistic effects associated with the use of drugs and alcohol in combination;

(II) physiological effects;

(III) psychological effects;

(IV) driving behaviors that may indicate impairment; and

(V) prescriptive and over-the-counter drugs.

(xi) Poor decision making and influencing factors -(instructional objective--to reinforce the impact unsafe driving behaviors have on our lives). Instruction shall address the following topics:

(I) consequences of unsafe behaviors and risk taking that effect family, friends, school, and community;

(II) real possibilities of poor decision making;

(III) impact of poor choices on your world; and

(IV) the role peer pressure has on decision making and risk taking.

(xii) Taking control -(instructional objective--to create a plan for behavior change). Instruction shall address the following topics:

(I) taking control of potentially dangerous driving situations as a driver or passenger;

(II) written plan and commitment by the student to family and friends that they will no longer engage in dangerous driving habits; and

(III) Course conclusion.

(xiii) Comprehensive examination--minimum five minutes (this shall be the last unit of instruction).

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, at a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) time to be dedicated to each training lesson; and

(VI) under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses under the observation of a licensed instructor trainer. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours in addition to a minimum of eight hours of practical instruction under the observation of a licensed instructor identified in clause (ii)(VI). Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the instructor trainee relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations.

(i) Student Examination. Each course provider shall submit for approval, as part of the application, two tests designed to measure the comprehension level of students at the completion of the driving safety course. The comprehensive examination for the driving safety course must include at least two questions from the required units set forth in subparagraph (D)(ii)-(xii), for a total of at least 20 questions. The comprehensive examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions but may facilitate alternative testing. Students may not be given credit for the driving safety course unless they score 70 percent or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(ii) Instructor Trainee. Each course provider shall submit for approval, as part of the application, two tests designed to measure the comprehension level of instructor trainee of the driving safety course. The comprehensive examination may consist of one all-inclusive test or test at the conclusion of major unit. The comprehensive examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist instructor trainees in answering the comprehensive examination questions but may facilitate alternative testing. Instructors may not be certified for the driving safety course unless they score 70 percent or more on the comprehensive examination. The course content guide shall identify alternative testing techniques to be used for instructor trainee with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the comprehensive examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to

enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course materials shall be written by individuals or organizations with recognized experience in writing instructional materials.

(H) Renewal of course approval. The course approval must be renewed every even-numbered year.

(i) For approval, the course provider shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(ii) The department may alter the due date of the renewal documents by giving the approved course six months notice. The department may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) Driving safety instructors shall successfully complete 16 clock hours instruction in the approved instructor development course prior to the required minimum of eight hours of practical instruction of the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 16 clock hours instruction and is present at the eight hours of practical instruction of training for driving safety instructors.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized department representatives at any time. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All instructor trainee instruction records submitted for the department-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses including the practical-teaching portion of the instructor development course shall be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A licensed instructor trainer shall present the course.

(3) Continuing education courses.

(A) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(B) The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;

(ii) the subject of each unit;

(iii) the instructional objectives of each unit;

(iv) time to be dedicated to each unit;

(v) instructional resources for each unit, including names or titles of presenters and facilitators;

(vi) any information that the department mandates to promote the quality of the education being provided; and

(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(C) A continuing education course may be approved if the department determines that:

(i) the course is designed to enhance the instructional skills, methods, or knowledge of the driving safety instructor;

(ii) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(iii) the course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals experience, or expertise may be requested by the department;

(iv) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and

(v) any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the department and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the department shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the department for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the department, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances:

(1) Any information contained in the application for the course approval is found to be untrue;

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued;

(3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter; or

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

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

Filed with the Office of the Secretary of State on April 26, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

§84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan shall include one or more of the following course programs.

(1) Core program. This program shall consist of at least 32 hours of classroom instruction; seven [~~7~~] hours of behind-the-wheel instruction in the presence of a certified instructor; seven [~~7~~] hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). [~~Under this plan, a student may receive only local credit for the course.~~]

(2) In-car only program. This program shall consist of at least seven [~~7~~] hours of behind-the-wheel instruction in the presence of a certified instructor; seven [~~7~~] hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). [~~Under this plan, a student may receive only local credit for the course.~~]

(3) Classroom only program. This program shall consist of at least 32 hours of classroom instruction. [~~Under this plan, a student may receive only local credit for the course.~~]

[~~(4) School day credit program. This program shall consist of at least one class period per scheduled day of school, for a semester (traditional, condensed, accelerated, block, etc.), covering the driver education classroom and in-car program of organized instruction or only the classroom program of organized instruction. This class traditionally consists of at least 56 hours of driver education classroom instruction and, if in-car instruction is provided, must include 7 hours of behind-the-wheel instruction in the presence of a certified instructor; 7 hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.~~]

[~~(5) Non-school day credit program. This program shall consist of at least 56 hours of driver education classroom instruction, and, if in-car instruction is provided, must include 7 hours of behind-the-wheel instruction in the presence of a certified instructor; 7 hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.~~]

[~~(6) Multi-phase school day or non-school day credit program. This program shall consist of at least 40 hours of driver education classroom instruction; 4 hours of behind-the-wheel instruction in the presence of a certified instructor; 8 hours of in-car observation in the presence of a certified instructor; 12 hours of simulator instruction in the presence of a certified instructor; and 30 hours of behind-the-wheel instruction, including at least 10 hours of instruction that takes place at night, verified by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). Under this plan, a student may receive one-half unit of state credit toward graduation.~~]

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 shall be issued to a student to obtain a learner's license upon completion of Module One. A driver license portion of the DE-964 shall be given when all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

[~~(1) Driver education programs may be scheduled in block or concurrent form.~~]

[~~(A) Block form is when the classroom phase is taught as a separate, complete unit before the in-car phase begins.~~]

[~~(B) Concurrent form is when the classroom and the in-car phases are taught simultaneously or on alternating days.~~]

(3) [~~(2)~~] Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) [~~(3)~~] Instruction shall not be scheduled before 5:00 a.m. or after 11:00 p.m. [~~The superintendent, college or university chief school official, or education service center (ESC) director may approve~~

exceptions to the scheduled hours of instruction and must include acceptance in writing of the exception by the parents or legal guardians for each of the students involved.]

(5) [(4)] The driver education classroom phase must have uniform beginning and ending dates. Students shall proceed in a uniform sequence. Students shall be enrolled and in class before the seventh [7th] hour of classroom instruction in a 32-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) [(5)] Self-study assignments occurring during regularly scheduled class periods shall not exceed 25 percent [25%] of the course and shall be presented to the entire class simultaneously.

(7) [(6)] The driver education course shall be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This shall not circumvent attendance or progress. Variances to the established timelines shall be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) [(7)] Public Schools are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) [(8)] A student shall not receive credit for more than four hours of driver education training at a public school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student shall be limited to a maximum of:

(A) two hours of classroom instruction;

(B) four hours of observation time;

(C) two hours of multicar range driving;

(D) three hours of simulation instruction; and

(E) one hour of behind-the-wheel instruction.

(10) [(9)] Driver education training verified by the parent is limited to one hour per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the department [commissioner of education], as specified in this subsection, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversized or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license [an instruction permit] after completing six hours of instruction as specified in Module One [if the student is taking the course in a concurrent program]. The minor and adult driver education program instructional objectives shall include:

(1) - (12) (No change.)

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the [filmed] instructional programs, and each plan for a multicar driving range must meet state specifications developed by the [DPS and the] department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

(f) A minimum of four [4] periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one [1] hour of behind-the-wheel and one [1] hour observation instruction. A minimum of two [2] periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one [1] hour of behind-the-wheel and one [1] hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) - (h) (No change.)

(i) Minor and adult driver education programs shall include the following components.

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

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction is not provided. In each case when only one student is instructed:

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

(j) [Courses offered to adult persons who are 18 years of age or older shall only be offered by colleges and universities.] Colleges and universities that offer driver education to adults shall submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

§84.601. Additional Procedures for Student Certification and Transfers.

(a) Unused DE-964s shall not be transferred to another school without written approval by the department.

(b) The DE-964 document is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the form as to the prerequisite set forth may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(c) The superintendent, college or university chief school official, ESC director, or their designee may request to receive serially numbered DE-964 certificates for exempt schools by submitting a com-

pleted order on the form provided by the department stating the number of certificates to be purchased and including payment of all appropriate fees. The department will accept purchase requisitions from school districts.

(d) All DE-964 certificates and records of certificates must be provided to the department or DPS upon request. The superintendent, college or university chief school official, ESC director, or their designee shall maintain the school copies of the certificates. The chief school official, ESC or DPS director, or their designee shall return unissued DE-964 certificates to the department within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(e) The public school may accept any part of the driver education instruction received by a student in another state; however, the student must complete all of the course requirements for a Texas driver education program. Driver education instruction completed in another state must be certified in writing by the chief official or course instructor of the school where the instruction was given and include the hours and minutes of instruction and a complete description of each lesson provided. The certification document must be attached to the student's individual record at the Texas school and be maintained with the record for seven years.

(f) Students who are licensed in another state and have completed that state's driver education program should contact the DPS for information on the licensing reciprocal agreement between that state and Texas.

(g) All records of instruction shall be included as part of the student's final history when it is necessary to compile multiple records to verify that a student successfully completed a driver education course.

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 26, 2020.

TRD-202001655
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 463-3671

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16 TAC §84.601

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeal.

§84.601. Procedures for Student Certification and Transfers.

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 26, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1003

The Texas Education Agency (TEA) proposes new §61.1003, concerning the career and technology education allotment for Pathways in Technology Early College High School (P-TECH) and New Tech Network campuses. The proposed new section would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available funding under Texas Education Code (TEC), §48.106(a)(2)(B) and (C).

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, added to the calculation of the career and technology education allotment under TEC, §48.106(a)(2)(B) and (C), $50 for each full-time equivalent student enrolled in a campus designated as a P-TECH school under TEC, §29.556, or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education. The fiscal note for HB 3 contemplated a school district entitlement under this provision of $50 per student in average daily attendance (ADA). There were concerns that the new language may only authorize an additional amount for a CTE course taken at one of those schools, significantly less than the $50 per ADA the fiscal note contemplated in the district funding analysis.

Proposed new §61.1003 would adjust entitlement as calculated under TEC, §48.106(a)(2)(B) and (C), to reflect $50 per student in ADA attending either a school designated as a P-TECH or a school that is a member of the New Tech Network.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal beyond what is authorized by statute. Approximately $1.6 million annually was appropriated for House Bill 3.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation because it imposes the requirements of recently enacted legislation.

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

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law and ensure that school districts receive appropriate levels of career and technology education funding under HB 3. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 8, 2020, and ends June 8, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 8, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor; and TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the career and technology education allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.004, 48.011, and 48.106, as added by House Bill 3, 86th Texas Legislature, 2019.

§61.1003. Career and Technology Education Allotment for P-TECH and New Tech Network Campuses.

(a) This rule, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §48.106(a)(2)(B) and (C).

(b) In place of funding under TEC, §48.106(a)(2)(B) and (C), a district is entitled to $50 for each student in average daily attendance enrolled in either of the following:

(1) a campus designated as a Pathways in Technology Early College High School (P-TECH) school under TEC, §29.556; or

(2) a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education.

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

Filed with the Office of the Secretary of State on April 27, 2020.

TRD-202001659
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1004

The Texas Education Agency (TEA) proposes new §61.1004, concerning special education funding for open-enrollment charter schools. The proposed new rule would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available additional special education funding for open-enrollment charter schools and how the regular program allotment will be impacted.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, changed the calculation of the basic allotment, the special education allotment, and charter school funding generally, under Texas Education Code (TEC), §§48.051, 48.102, and 12.106, respectively. Even though overall funding levels for open-enrollment charter schools increased as a result of HB 3, these changes resulted in a statewide reduction in the specific special education allotment for open-enrollment charter schools relative to prior law.

Proposed new §61.1004 would calculate the difference between the special education allotment under former TEC, §42.151, and the special education allotment for each open-enrollment charter school under new TEC, §48.102, and deliver additional funds to ensure that the overall level of funds made available for special education for each open-enrollment charter school is not reduced by the implementation of HB 3. The rule as proposed would set aside the funds described above from each open-enrollment charter school's regular program allotment, as calculated under TEC, §48.051.

Proposed new §61.1004 would expire after five years.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation because it imposes the requirements of recently enacted legislation.

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

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law and ensure that open-enrollment charter schools receive appropriate levels of special education funding under HB 3. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 8, 2020, and ends June 8, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 8, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §12.106, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which details the calculation of state funding that open-enrollment charter schools are entitled to under the Foundation School Program; TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor; TEC, §48.051, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the regular program allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program; and TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the special education allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§12.106, 48.011, 48.051, and 48.102, as added by House Bill 3, 86th Texas Legislature, 2019.

§61.1004. Special Education Funding for Open-Enrollment Charter Schools.

(a) This rule, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in TEC, §§12.106, 48.051, and 48.102.

(b) An open-enrollment charter school shall receive additional special education funding in an amount equal to the difference, if that difference is greater than zero, between the total amount of funding the open-enrollment charter school would have received for special education purposes under former TEC, §42.151, as it existed on January 1, 2019, and the amount of total funding received for special education purposes under TEC, §48.102, for the applicable school year referenced in TEC, §48.277(b)(1).

(c) An open-enrollment charter school's entitlement under TEC, §48.051, shall be reduced by an amount equivalent to the amount of the additional special education funding provided under subsection (b) of this section. A reduction under this section may not exceed the open-enrollment charter school's entitlement under TEC, §48.051.

(d) This section has no application beginning with the 2024-2025 school year.

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

Filed with the Office of the Secretary of State on April 27, 2020.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1005

The Texas Education Agency (TEA) proposes new §61.1005, concerning additional state aid for staff salary increases at regional education service centers (RESCs). The proposed new section would reflect changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate

and make available funding under former Texas Education Code (TEC), §42.2513.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, repealed additional state aid for staff salary increases under former TEC, §42.2513. Prior law provided a staff supplement of $500 for full-time and $250 for part-time staff who were neither classified as administrators nor subject to the minimum salary schedule. These provisions provided a funding entitlement to RESCs. HB 3 repealed the staff salary supplement as a separate allotment and provided the funding through the basic allotment.

RESCs, however, do not receive a basic allotment, and the repeal of the allotment results in the loss of entitlement to these entities. None of the fiscal analyses of HB noted this impact. HB 3 incorporates service centers into many of its reforms. Ongoing training and staffing obligations are created in the bill that contradict an attempt to reduce RESCs' funding. As a result, the loss of funding constitutes an unanticipated loss of entitlement.

Proposed new §61.1005 will adjust entitlement under the authority of TEC, §48.011, to flow funding to RESCs in the amount of the prior staff salary supplement as calculated under former TEC, §42.2513, for the 2018-2019 school year.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that the proposed new rule will impose a cost of $2.2 million annually to the state for the first five years the rule is in effect. The funding will be used for staff salary increases at RESCs.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation because it imposes the requirements of recently enacted legislation.

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

PUBLIC BENEFIT AND COST TO PERSONS: The proposal would ensure that rule language is based on current law and ensure that RESCs receive a flow of funding in the amount of the prior staff salary supplement as calculated under former TEC, §42.2513, for the 2018-2019 school year. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 8, 2020, and ends June 8, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 8, 2020. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The new section is proposed under House Bill (HB) 3, §4.001(39), 86th Texas Legislature, 2019, which repealed TEC, §42.2513, that detailed the calculation of additional state aid for staff salary increases that school districts and regional education service centers were entitled to under the Foundation School Program; Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor.

CROSS REFERENCE TO STATUTE. The new section implements House Bill (HB) 3, §4.001(39), 86th Texas Legislature, 2019, and Texas Education Code, §48.004 and §48.011, as added by HB 3, 86th Texas Legislature, 2019.

§61.1005. Additional State Aid for Staff Salary Increases at Regional Education Service Centers.

(a) This rule, made pursuant to Texas Education Code (TEC), §48.011 and §48.004, addresses calculations in former TEC, §42.2513.

(b) A regional education service center is entitled to $500 for each full-time and $250 for each part-time employee, other than administrators or employees subject to the minimum salary schedule, reported to Texas Education Agency through the Foundation School Program data collection system for the 2018-2019 school year.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 475-1497

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CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM
DIVISION 1. IMPLEMENTATION OF ASSESSMENT INSTRUMENTS

19 TAC §101.3011

The Texas Education Agency (TEA) proposes an amendment to §101.3011, concerning the implementation and administration of academic content area assessment instruments. The proposed amendment would modify the rule to clarify testing requirements for accelerated students who have completed end-of-course (EOC) assessments before entering high school.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3011 addresses state and federal requirements relating to the implementation and administration of academic content area assessment instruments. The proposed amendment to 19 TAC §101.3011 would clarify state and federal testing requirements relating to accelerated students.

In alignment with federal testing and accountability requirements, all students are required to be tested at least once in high school. To satisfy federal requirements, students who complete their state required EOC assessments before entering high school are now required to take the ACT® or SAT®. In accordance with House Bill 3, 86th Texas Legislature, 2019, TEC, §39.0261(a)(3)(A), College Preparation Assessment, now provides for students to take a nationally norm-referenced assessment used by colleges and universities one time during high school at state cost. The scores of these tests will be used for federal accountability purposes if a student has completed EOC assessments prior to entering high school.

The proposed amendment would add new subsection (a)(2) to require students in Grades 3-8 who are accelerated and are on track to complete EOC assessment requirements prior to entering high school to take either the ACT® or SAT® at least once in high school for federal accountability purposes. District may choose to have these students test between January of Grade 11 through graduation at state cost in accordance with TEC, §39.0261(a)(3)(A). Original subsections (a)(2) and (a)(3) would be renumbered accordingly.

The proposed amendment would delete subsection (c), which references the previous statewide assessment program, the Texas Assessment of Knowledge and Skills (TAKS). With the implementation of Senate Bill (SB) 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, TAKS is no longer administered. As such, this language is no longer applicable. The subsequent subsections would be relettered accordingly.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed amendment would be in effect, it would limit an existing regulation through the elimination of references to TAKS. Additionally, the proposed amendment would expand an existing regulation by requiring students in Grades 3-8 who are accelerated and are on track to complete EOC assessment requirements prior to entering high school to take either the ACT® or SAT® at least once in high school for federal accountability purposes.

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that state testing requirements are aligned with federal testing and accountability requirements. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 8, 2020, and ends June 22, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 8, 2020. A form for submitting public comments is available on the TEA website at

https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.0211(o) and (p), which provide that accelerated students in Grades 5 and 8 are not required to take their grade-level assessment and may not be denied promotion based on their performance on an advanced assessment; TEC, §39.023(a), (a-2), (b), (c), and (l), which specify the required testing for students in Grades 3-8, accelerated students, students who are significantly cognitively disabled, students enrolled in high school courses, and students whose primary language is Spanish, respectively; TEC, §39.0238, which establishes Algebra II and English III EOC assessments as measures of postsecondary readiness; TEC, §39.0261(a)(3)(A), which provides for high school students to take a nationally norm-referenced assessment one time at state cost; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(C), which allows states to exempt Grade 8 students from their grade-level mathematics assessment and instead take and use a score from the state's EOC mathematics assessment for accountability purposes as long as a more advanced assessment is taken to fulfill accountability requirements in high school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§28.0211(o) and (p); 39.023(a), (a-2), (b), (c), and (l); 39.0238; and 39.0261(a)(3)(A); and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(C).

§101.3011. Implementation and Administration of Academic Content Area Assessment Instruments.

(a) The Texas Education Agency (TEA) shall administer each assessment instrument under the Texas Education Code (TEC), §39.023(a), (b), (c), and (l), and §39.0238, in accordance with the rules governing the assessment program set forth in Chapter 101 of this title (relating to Assessment).

(1) For [~~Except as required for~~] purposes of federal accountability as allowed by subsection (d) [~~(e)~~] of this section, a Grade 3-8 student shall not be administered a grade-level assessment if the student:

(A) is enrolled in a course or subject intended for students above the student's enrolled grade level and will be administered a grade-level assessment instrument developed under the TEC, §39.023(a), that aligns with the curriculum for that course or subject within the same content area; or

(B) is enrolled in a course for high school credit in a subject intended for students above the student's enrolled grade level and will be administered an end-of-course assessment instrument developed under the TEC, §39.023(c), that aligns with the curriculum for that course or subject within the same content area.

(2) For purposes of federal accountability as allowed by subsection (d) of this section, a Grade 3-8 student who is accelerated in mathematics, reading/language arts, or science and on schedule to complete the high school end-of-course assessments in that same content area prior to high school shall be assessed at least once in high school with the ACT® or the SAT®.

(3) [~~(2)~~] A student is only eligible to take an assessment instrument intended for use above the student's enrolled grade if the student is on schedule to complete [~~receiving~~] instruction in the entire curriculum for that subject during the semester the assessment is administered.

(4) [~~(3)~~] As specified in the TEC, §28.0211(p), a Grade 5 or 8 student described by paragraph (1)(A) or (B) of this subsection may not be denied promotion on the basis of failure to perform satisfactorily on an assessment instrument above the student's grade level.

(b) The [~~As allowed by 34 Code of Federal Regulations, §200.6, the~~] TEA shall administer alternative assessment instruments under the TEC, §39.023(b), that correspond to:

(1) the assessment instruments required under the TEC, §39.023(a); and

(2) the following assessment instruments required under the TEC, §39.023(c): English I, English II, Algebra I, biology, and U.S. history.

[~~(c) The TEA shall administer each appropriate assessment under the TEC, §39.023, as that section existed before amendment by Senate Bill 1031, 80th Texas Legislature, 2007.~~]

(c) [~~(d)~~] Test administration procedures shall be established by the TEA in the applicable test administration materials. A school district, an open-enrollment charter school, or a private school administering the tests required by the TEC, Chapter 39, Subchapter B, shall follow procedures specified in the applicable test administration materials.

(d) [~~(e)~~] In accordance with [~~House Bill 411, Section 5, 78th Texas Legislature, 2003, this subsection is adopted by the commissioner of education for the implementation of~~] the TEC, §39.023(a)(6), the [~~. The~~] TEA shall administer to students assessments in any other subject and grade required by federal law.

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

Filed with the Office of the Secretary of State on April 27, 2020.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 300. MANUFACTURE, DISTRIBUTION, AND RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes new §§300.100 - 300.104, 300.201 - 300.203, 300.301 - 300.303, 300.401 - 300.404, 300.501, 300.502, and 300.601 - 300.606 in new

Chapter 300, concerning the Manufacture, Distribution, and Retail Sale of Consumable Hemp Products.

BACKGROUND AND PURPOSE

The purpose of the proposal is to comply with House Bill (H.B.) 1325, 86th Legislature, Regular Session, 2019, which added Texas Health and Safety Code, Chapter 443, relating to the manufacture, distribution, and sale of consumable hemp products.

Under the authority of Texas Health and Safety Code, Chapter 443, the DSHS Hemp Program regulates the manufacture, processing, distribution, and sale of consumable hemp products. Hemp Program regulations are intended to ensure that consumable hemp products are safe to consume and properly labeled. The Hemp Program requires and issues a license for the manufacture, processing, and distribution of consumable hemp products, and a registration of retailers of consumable hemp products.

SECTION-BY-SECTION SUMMARY

Proposed Subchapter A creates rules related to General Provisions by implementing §300.100, Purpose; §300.101, Definitions; §300.102, Applicability of Other Rules and Regulations; §300.103, Inspections; and §300.104, Manufacture, Processing, Distribution, and Retail Sale of Hemp Products for Smoking.

Proposed Subchapter B creates rules related to Manufacture, Processing, and Distribution of Consumable Hemp Products by implementing §300.201, Application for License or Renewal; §300.202, License Term and Fees; and §300.203, Access to Records.

Proposed Subchapter C creates rules related to the Testing of Consumable Hemp Products by implementing §300.301, Testing Required; §300.302, Sample Analysis of Consumable Hemp and Certain Cannabinoid Oils; and §300.303, Provisions Related to Testing.

Proposed Subchapter D creates rules related to the Retail Sale of Consumable Hemp Products by implementing §300.401, Possession, Distribution and Sale of Consumable Hemp Products; §300.402, Packaging and Labeling Requirements; §300.403, Retail Sale of Out-of-State Consumable Hemp Products; and §300.404, Transportation and Exportation of Consumable Hemp Products Out-of-State.

Proposed Subchapter E creates rules related to the Registration for Retailers of Consumable Hemp Products by implementing §300.501, Registration Required for Retailers of Certain Products and §300.502, Application.

Proposed Subchapter F creates rules related to the Enforcement of Chapter 300 by implementing §300.601, Violation of Department License or Registration Requirement; §300.602, Prohibited Acts; §300.603, Detained or Embargoed Article; §300.604, Destruction of Article; §300.605, Correction by Proper Labeling or Processing; and §300.606, Administrative Penalty.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcement or administration of the rules, there will be an estimated additional cost and revenue to state government. DSHS does not anticipate a cost to local governments from the implementation of the rules.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of $401,008 in fiscal year (FY) 2020; $598,992 in fiscal year FY 2021; $1,067,814 in FY 2022; $1,269,503 in FY 2023; and $1,499,838 in FY 2024; and an estimated increase in revenue of $1,200,000 in FY 2020; $1,475,000 in FY 2021; $1,807,500 in FY 2022; $2,194,000 in FY 2023; and $2,637,500 in FY 2024.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will create a government program;

(2) implementation of the proposed rules will create new DSHS employee positions;

(3) implementation of the proposed rules will require an increase in future legislative appropriations in FY 2022 - FY 2024;

(4) the proposed rules will affect fees paid to DSHS;

(5) the proposed rules create new Hemp Program rules;

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

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) the proposed rules will positively affect the state's economy.

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

Donna Sheppard, Chief Financial Officer, has determined that there is no anticipated adverse economic effect on small businesses, micro-businesses, or rural communities. The new rules will expand economic opportunity for individuals interested in the manufacture, processing, or retail sale of consumable hemp products.

LOCAL EMPLOYMENT IMPACT

The proposed rules will positively affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and the rules are necessary to implement legislation that does not specifically state that §2001.045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be the increased opportunity for business owners who are engaged in the manufacture, processing, distribution, and retail sale of consumable hemp products.

Donna Sheppard has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs due to requirements in the rules for licensure fees and testing of hemp products for an entity engaged in the manufacture, processing, and distribution of consumable hemp, and registration fees for an entity engaged in the sale of consumable hemp products.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Rod Moline, Ph.D., R.S., Section Director, at (512) 231-5712 in the DSHS/CPD Policy, Standards, and Quality Assurance Unit.

Written comments on the proposal may also be submitted to Rod Moline, Ph.D., R.S., Section Director, Mail Code 1987, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, or by email to DSHSHempProgram@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered at 8407 Wall Street, Austin, Texas 78754 before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R074 Hemp Program" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§300.100 - 300.104

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Health and Safety Code, Chapter 443.

§300.100. Purpose.

This chapter implements Texas Health and Safety Code, Chapter 443, regulating the manufacture, distribution, and retail sale of consumable hemp and consumable hemp products in the State of Texas.

§300.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless context clearly indicates otherwise:

(1) Acceptable hemp THC level--A delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

(2) Accredited laboratory--A laboratory accredited in accordance with the International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard.

(3) Act--House Bill 1325, 86th Legislature, Regular Session, 2019, relating to the production and regulation of hemp in Texas, codified in Texas Health and Safety Code, Chapter 443.

(4) Analyte--A chemical, compound, element, bacteria, yeast, fungus, mold, or toxin identified and measured by accredited laboratory analysis.

(5) Approved hemp source--Hemp and hemp products grown for human use and consumption produced under a state or a compatible federal, foreign, or Tribal plan, approved by the United States Department of Agriculture under 7 United States Code (U.S.C.) Chapter 38, Subchapter VII, or Texas Agriculture Code, Chapter 121, or in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

(6) Cannabidiol (CBD)--A phytocannabinoid identified as an extract from cannabis plants.

(7) Certificate of Analysis (COA)--An official document released by the accredited laboratory to the manufacturer, processor, distributor, or retailer of consumable hemp products, the public, or department, which contains the concentrations of cannabinoid analytes and other measures approved by the department, to also include data on levels of THC and state whether a sample passed or failed any limits of content analysis.

(8) Consumable hemp product (CHP)--Any product processed or manufactured for consumption that contains hemp, including food, a drug, a device, and a cosmetic, as those terms are defined by Texas Health and Safety Code, §431.002, but does not include any consumable hemp product containing a hemp seed, or hemp seed-derived ingredient being used in a manner that has been generally recognized as safe (GRAS) by the FDA.

(9) Consumable hemp products license--A license issued to a person or facility engaged in the act of manufacturing, extracting, processing, or distributing consumable hemp products for human consumption or use.

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

(11) Department--Department of State Health Services.

(12) Distributor--A person who distributes consumable hemp products for resale, either through a retail outlet owned by that person or through sales to another retailer. A distributor is required to hold a consumable hemp products license.

(13) Facility--A place of business engaged in manufacturing, processing, or distributing consumable hemp products subject to the requirements of this chapter and Texas Health and Safety Code, Chapter 431. A facility includes a domestic or foreign facility that is required to register under the Federal Food, Drug, and Cosmetic Act, Section 415 in accordance with the requirements of 21 Code of Federal Regulations Part 1, Subpart H.

(14) FDA--The United States Food and Drug Administration or its successor agency.

(15) Federal Act--Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

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

(17) Good manufacturing practices--Procedures identified and implemented to ensure conformance to the sanitary guidelines recommended by the department with respect to the manufacture and sale of consumable hemp and consumable hemp ingredients, including all provisions as identified and defined in Texas Health and Safety Code, Chapter 431.

(18) Hemp--The plant, Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts,

cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

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

(20) Independent contractor--A person or entity contracted to perform work or sales for a registrant.

(21) License holder--The person who is legally responsible for the operation as a consumable hemp manufacturer, processor, or distributor, and possesses a valid license.

(22) Lot number--A specific quantity of raw or processed hemp product that is uniform and intended to meet specifications for identity, strength, purity, and composition that shall contain the manufacturer's, processor's, or distributor's, number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of consumable hemp products.

(23) Manufacturer--A person who makes, extracts, processes, or distributes consumable hemp product from one or more ingredients, including synthesizing, preparing, treating, modifying or manipulating hemp or hemp crops or ingredients to create a consumable hemp product. For farmers and persons with farm mixed-type facilities, manufacturing and processing does not include activities related to growing, harvesting, packing, or holding raw hemp product.

(24) Measurement of uncertainty--The parameter, associated with the results of an analytical measurement that characterizes the dispersion of the values that could reasonably be attributed to the quantity subjected to testing measurement. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance.

(25) Non-consumable hemp processor--A person who intends to process hemp products not for human consumption and is registered with the Texas Department of Agriculture.

(26) Non-consumable hemp product--As defined by Texas Agriculture Code, §122.001(8), means a product that contains hemp, other than a consumable hemp product as defined by Texas Health and Safety Code, §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.

(27) Pathogen--A microorganism of public health significance, including molds, yeasts, Listeria monocytogenes, Campylobacter, Salmonella, E. coli, Yersinia, or Staphylococcus.

(28) Person--An individual, business, partnership, corporation, or association.

(29) Process--Extraction of a component of hemp, including CBD or another cannabinoid, that is:

(A) sold as a consumable hemp product;

(B) offered for sale as a consumable hemp product;

(C) incorporated into a consumable hemp product; or

(D) intended to be incorporated into a consumable hemp product.

(30) Processor--A person who operates a facility which processes raw agriculture hemp into consumable hemp products for manufacture, distribution, and sale. A hemp processor is required to hold a consumable hemp products license. A person issued a consumable hemp products license, which only engages in the manufacturing, processing, and distribution of consumable hemp products, is not required to hold a license under Texas Health and Safety Code, Chapter 431, Subchapter J.

(31) QR code--A quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to product information regarding manufacturer data and accredited laboratory certificates of analysis.

(32) Raw hemp--An unprocessed hemp plant, or any part of that plant, in its natural state.

(33) Registrant--A person, on the person's own behalf or on behalf of others, who sells consumable hemp products directly to consumers, and who submits a complete registration form to the department for purposes of registering their place of business to sell consumable hemp products at retail to the public.

(34) Reverse distributor--A person registered with the federal Drug Enforcement Agency as a reverse distributor that receives controlled substances from another person or entity for return of the products to the registered manufacturer or to destroy adulterated or impermissible THC products.

(35) Smoking--Burning or igniting a consumable hemp product and inhaling the resultant smoke, vapor, or aerosol.

(36) Tetrahydrocannabinol (THC)--The primary psychoactive component of the cannabis plant.

(37) Texas Department of Agriculture--The state agency responsible for regulation of planting, growing, harvesting, and testing of hemp as a raw agricultural product.

(38) Texas.gov--The online registration system for the State of Texas found at https://www.texas.gov.

§300.102. Applicability of Other Rules and Regulations.

Hemp manufacturers, processors, distributors, and retailers must comply with all relevant laws and rules applicable to the manufacture, processing, distribution and sale of consumable products, including:

(1) Chapter 217, Subchapter C of this title (relating to Rules for the Manufacture of Frozen Desserts);

(2) Chapter 229, Subchapter D of this title (relating to Regulation of Cosmetics);

(3) Chapter 229, Subchapter F of this title (relating to Production, Processing, and Distribution of Bottled and Vended Drinking Water);

(4) Chapter 229, Subchapter G of this title (relating to Manufacture, Storage, and Distribution of Ice Sold for Human Consumption, Including Ice Produced at Point of Use);

(5) Chapter 229, Subchapter L of this title (relating to Licensure of Food Manufacturers, Food Wholesalers, and Warehouse Operators);

(6) Chapter 229, Subchapter N of this title (relating to Current Good Manufacturing Practice and Good Warehousing Practice In Manufacturing, Packing, Or Holding Human Food);

(7) Chapter 229, Subchapter W of this title (relating to Licensing of Wholesale Distributors of Prescription Drugs--Including Good Manufacturing Practices);

(8) Chapter 229, Subchapter X of this title (relating to Licensing of Device Distributors and Manufacturers); and

(9) Chapter 229, Subchapter GG of this title (relating to Sanitary Transportation of Human Foods).

§300.103. Inspections.

(a) Authorized employees of the department may, upon presenting appropriate credentials to the owner, operator, or person in charge:

(1) enter at reasonable times the premises, conduct inspections, collect samples, and take photographs to determine compliance with this chapter and Texas Health and Safety Code, Chapters 431 and 443;

(2) enter a vehicle being used to transport or hold the consumable hemp product in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the facility or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this chapter.

(b) The inspection of a facility where consumable hemp products are manufactured, processed, distributed, packed, held or sold, for introduction into commerce shall be for the purpose of determining if the consumable hemp product is:

(1) adulterated or misbranded; or

(2) otherwise manufactured, processed, held, distributed or sold in violation of this chapter or Texas Health and Safety Code, Chapters 431 and 443.

(c) An inspection of a facility in which a prescription drug or restricted device is being manufactured, processed, packed, or held for introduction into commerce under subsection (b) of this section shall not extend to:

(1) financial data;

(2) sales data other than shipment data;

(3) pricing data;

(4) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under this chapter; or

(5) research data other than data:

(A) relating to new consumable hemp products; and

(B) subject to reporting and inspection under regulations issued under §505(i) or (j), §519, or §520(g) of the Federal Act.

(d) An inspection under subsection (b) of this section shall be started and completed with reasonable promptness.

§300.104. Manufacture, Processing, Distribution, and Retail Sale of Hemp Products for Smoking.

The manufacture, processing, distribution, or retail sale of consumable hemp products for smoking is prohibited.

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 23, 2020.

TRD-202001565
Barbara Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 231-5653

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SUBCHAPTER B. MANUFACTURE, PROCESSING, AND DISTRIBUTION OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.201 - 300.203

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Health and Safety Code, Chapter 443.

§300.201. Application for License or Renewal.

(a) A person must hold a consumable hemp products license issued by the department before engaging in the manufacture, processing, or distribution of consumable hemp and hemp-derived products.

(b) A person shall apply for a consumable hemp products license under this subchapter by submitting an application to the department in the manner prescribed by the department for each location engaged in the manufacture, processing, or distribution of consumable hemp products. The application must be accompanied by:

(1) a legal description of each location to include the global positioning system coordinates for the perimeter of each location:

(A) where the applicant intends to manufacture or process consumable hemp products; and

(B) where the applicant intends to store consumable hemp products to include the global positioning system coordinates for the perimeter of each location;

(2) written consent from the applicant or the property owner, if the applicant is not the property owner, for the department, the Department of Public Safety, and any other state or local law enforcement agency, to enter all premises where consumable hemp is manufactured, processed, or delivered, to conduct a physical inspection or to ensure compliance with this chapter; and

(3) a fingerprint-based criminal background check from each applicant at the applicant's expense.

(c) If the applicant or person has been convicted of a felony relating to a controlled substance under federal law or the law of any state

within ten years before the date of application, the department shall not issue a consumable hemp products license under this subchapter.

(d) If the department receives information that a license holder under this subchapter has been convicted of a felony relating to a controlled substance under federal law or the law of any state within ten years before the issue date of the license, the department shall revoke the consumable hemp products license.

(e) A person who holds a consumable hemp products license under this subchapter shall undergo a fingerprint-based criminal background check at his own expense.

(f) Applications must contain the following information:

(1) the name of the license applicant;

(2) the business name, if different than applicant name;

(3) the mailing address of the business;

(4) the street address of the facility;

(5) the primary business contact telephone number;

(6) the personal email address of the applicant; and

(7) the email address of the business, if different than the applicant's email address.

(g) If a person owns or operates two or more facilities, each facility shall be licensed separately by listing the name and address of each facility on separate application forms.

(h) Applicants must submit an application for a consumable hemp products license request under this subchapter electronically through Texas.gov. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas.gov.

(i) All fees required by the department must be submitted with the application.

(j) Applicants must submit any other information required by the department, as evidenced and provided upon application forms.

(k) A consumable hemp products license issued by the department should be displayed in an obvious and conspicuous public location within the facility to which the license applies.

§300.202. License Term and Fees.

(a) A consumable hemp product license is valid for one year from the date displayed on the license.

(b) The department shall issue and renew a license if the license holder:

(1) is eligible to obtain a license under §300.201 of this subchapter (relating to Application for License or Renewal);

(2) submits a license fee to the department;

(3) does not owe outstanding fees to the department;

(4) possesses testing results of consumable hemp products before their manufacture, distribution, or sale into commerce, and provides those testing results upon department request; and

(5) has not been convicted of a felony relating to a controlled substance under federal law or the law of any state in the ten years before the date of renewal of the license.

(c) Fees.

(1) Before the manufacture, processing, or distribution of consumable hemp products, a license holder must pay a fee of $250 per facility.

(2) For each facility a license holder must pay:

(A) a $250.00 fee for amendment to a new license due to a change of ownership of the licensed facility; or

(B) a $125.00 fee for any amendment during the licensure period due to minor changes, such as change of location, change of name, or change of address.

(3) Fees are not prorated.

(4) A person who files a renewal application after the expiration date of the current license must pay an additional delinquency fee of $100.

(d) An application for an amendment of a consumable hemp product license is complete when the department has received, reviewed, and found acceptable the application information and fee required by the subsection (c) of this section.

(e) An initial and renewal application for a consumable hemp product license must be processed in accordance with the following time periods:

(1) the first time period of 45 business days begins on the date the department receives a completed application. If an incomplete application is received, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall be issued within 45 business days after receipt of the incomplete application and describe the specific information or fee that is required before the application is considered complete;

(2) the second time period of 45 business days begins on the date the department receives a completed application and ends on the date the license is issued or the facility is issued a written notice that the application is being proposed for denial; and

(3) if the applicant fails to submit the requested information or fee within 135 calendar days after the date the department issued the written notice to the applicant as described in paragraph (1) of this subsection, the application is considered withdrawn.

(f) Reimbursement of fees:

(1) in the event the application is not processed within the time periods stated in subsection (g) of this section, the applicant has the right to make a written request within 30 business days after the end of the second time period that the department shall reimburse in full the fee paid in that application process; and

(2) if the department finds that good cause does not exist for exceeding the established periods, the request shall be denied, and the department shall notify the applicant in writing of the denial of the reimbursement within 30 business days after the department's decision.

§300.203. Access to Records.

(a) A person who is required to maintain records under this chapter or §519 or §520(g) of the Federal Act must maintain records on site for immediate inspection, and at the request of the department, provide access to records for review or copying to verify consumable hemp products are being produced in accordance with United States Department of Agriculture under 7 United States Code (U.S.C.) Chapter 38, Subchapter VII, or Texas Agriculture Code, Chapter 121.

(b) A person licensed under Texas Agriculture Code, Chapter 122, shall make available to the department upon request the results of tests conducted on samples of hemp or hemp products as evidence that the delta-9 tetrahydrocannabinol content concentration level on a dry

weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less delta-9 tetrahydrocannabinol concentration of the hemp or hemp products does not exceed 0.3 percent.

(c) Records described in subsection (b) of this section must be maintained for a period of no less than three years after the date the records are created.

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

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SUBCHAPTER C. TESTING OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.301 - 300.303

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Health and Safety Code, Chapter 443.

§300.301. Testing Required.

(a) All hemp or hemp derivatives used in the manufacture of a consumable hemp product must be tested by an accredited laboratory to determine:

(1) the presence and concentration of cannabinoids;

(2) the presence and concentration of THC; and

(3) the presence or quantity of residual solvents, heavy metals, pesticides, and harmful pathogens.

(b) A Certificate of Analysis documenting tests conducted under this subchapter shall:

(1) be made available to the department upon request in an electronic format before manufacture, processing, or distribution into commerce;

(2) be in a format that documents presence and content of CBD, and levels of THC; and

(3) include measurement of uncertainty analysis parameters.

§300.302. Sample Analysis of Consumable Hemp and Certain Cannabinoid Oils.

(a) This section does not apply to low-THC cannabis regulated under Texas Health and Safety Code, Chapter 487.

(b) Notwithstanding any other law, a person shall not sell, offer for sale, possess, distribute, or transport a consumable hemp product in this state, including CBD oil, if the consumable hemp product contains any material extracted or derived from the plant Cannabis sativa L., other than from hemp produced in compliance with 7 United States Code (U.S.C.) Chapter 38, Subchapter VII, unless:

(1) a representative sample of the oil has been tested by an accredited laboratory and found to have a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less; and

(2) testing results are provided to the department upon request.

(c) The department shall conduct random testing of consumable hemp products at various retail and other facilities that sell or distribute products to ensure the products:

(1) do not contain harmful ingredients;

(2) are produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(3) have a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

(d) Upon request by the department, the manufacturer, processor, distributor, or retailer of consumable hemp products shall provide representative raw or finished consumable hemp product samples to the department.

(e) Representative raw or finished consumable hemp product samples shall be provided to the department at owner, license holder, or registrant expense.

§300.303. Provisions Related to Testing.

(a) A consumable hemp product that exceeds the acceptable hemp THC level or is adulterated in a manner harmful to human consumption shall not be sold at retail or otherwise introduced into commerce in this state.

(b) A hemp manufacturer, processor, or distributor shall provide the results of testing required by §300.301 of this subchapter (relating to Testing Required) to the department upon request.

(c) The registrant shall provide the testing results required under §300.301 of this subchapter to a consumer or the department upon request.

(d) A license holder shall not use an independent testing accredited laboratory unless the license holder has:

(1) no ownership interest in the accredited laboratory; or

(2) holds less than a ten percent ownership interest in the accredited laboratory if the accredited laboratory is a publicly-traded company.

(e) A license holder must pay the costs of raw and finished hemp product testing in an amount prescribed by the accredited laboratory selected by the license holder.

(f) The department shall recognize and accept the results of a test performed by an accredited laboratory.

(g) The department may require that a copy of the test results be sent directly to the department and the license holder.

(h) The department shall notify the license holder of the results of the test not later than the 14th day after the date testing results are made available to the department.

(i) A license holder shall retain results from samples for a period of no less than three years from the date that testing results are made available to the license holder.

(j) A manufacturer or processor of consumable hemp products shall conduct sampling and testing using acceptance criteria that are protective of public health.

(k) A consumable hemp product is not required to be tested under §300.301 of this subchapter if each hemp-derived ingredient of the product:

(1) has been tested;

(2) includes the results that are available upon request from the department before distribution or sale; and

(3) contains an acceptable hemp THC level.

(l) The department may utilize Table 1 to test raw or finished consumable hemp products:
Figure: 25 TAC §300.303(l)

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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Barbara Klein
General Counsel
Department of State Health Services
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SUBCHAPTER D. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.401 - 300.404

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Health and Safety Code, Chapter 443.

§300.401. Possession, Distribution, and Sale of Consumable Hemp Products.

A person licensed or registered by the department under this chapter may possess, transport, distribute, or sell a consumable hemp product processed or manufactured in compliance with this chapter.

§300.402. Packaging and Labeling Requirements.

(a) All hemp products marketed as containing CBD must, in addition to the requirements of §300.102 of this chapter (relating to Applicability of Other Rules and Regulations), be labeled in the manner provided by this section with the following information:

(1) lot identification number;

(2) lot date;

(3) product name;

(4) the name of the product's manufacturer;

(5) telephone number and email address of manufacturer; and

(6) a Certificate of Analysis that the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

(b) The label required by this section must appear on each product intended for individual retail sale.

(c) The label required by this section may be in the form of:

(1) a uniform resource locator (URL) for the manufacturer's Internet website that provides or links to the information required by this section; and

(2) a QR code or other bar code that may be scanned and that leads to the information required on the label.

§300.403. Retail Sale of Out-Of-State Consumable Hemp Products.

A registrant selling consumable hemp products processed or manufactured outside of this state must, upon request, submit to the department evidence that the products were processed or manufactured in another state or a foreign jurisdiction in compliance with:

(1) a state or tribal or jurisdiction's plan approved by the United States Department of Agriculture under 7 United States Code (U.S.C.) §1639p;

(2) a plan established under 7 U.S.C. §1639q if that plan applies to the state or jurisdiction; or

(3) the laws of a foreign jurisdiction if the products are tested in accordance with §300.301 of this chapter (relating to Testing Required) and comply with federal regulations.

§300.404. Transportation and Exportation of Consumable Hemp Products Out of State.

Consumable hemp products may be legally transported across state lines and exported to foreign jurisdictions in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

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

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SUBCHAPTER E. REGISTRATION FOR RETAILERS OF CONSUMABLE HEMP PRODUCTS

25 TAC §300.501, §300.502

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Health and Safety Code, Chapter 443.

§300.501. Registration Required for Retailers of Certain Products.

(a) This section does not apply to:

(1) low-THC cannabis regulated under Texas Health and Safety Code, Chapter 487; or

(2) products recognized by the FDA under 21 CFR Part 182, Substances Generally Recognized as Safe (GRAS).

(b) A person shall not sell consumable hemp products containing CBD at retail in this state unless the person registers with the department each location owned, operated, or controlled by the person at which those products are sold.

(c) A person is not required to register with the department under subsection (b) of this section if the person is:

(1) an employee of a registrant; or

(2) an independent contractor of a registrant who sells the registrant's products at retail.

§300.502. Application.

(a) A person shall register under this subchapter by submitting an application in the manner prescribed by the department.

(b) Applications must be submitted by the owner, operator, or owner designee and shall contain the following information:

(1) the name under which the business is operated;

(2) the mailing address of the facility;

(3) the street address of each location;

(4) the primary business contact telephone number;

(5) the phone number for each location; and

(6) the primary business email address.

(c) A registration is valid for one year and may be renewed annually, provided the registrant remains in good standing.

(d) Proof of registration from the department must be prominently displayed in a conspicuous location visible to the public.

(e) Applicants must submit an application for registration request electronically through www.Texas.gov.

(f) The department shall collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through www.Texas.gov.

(g) All fees required by the department must be submitted with the application.

(1) A retail hemp registration or renewal fee of $150.00 for each location is required before the sale of consumable hemp product.

(2) A person who holds a registration issued by the department under Texas Health and Safety Code, Chapter 443, shall renew the registration by filing an application for renewal on a form authorized by the department accompanied by the appropriate registration fee. A registrant must file for renewal before the expiration date of the current registration. A person who files a renewal application after the expiration date must pay an additional $100 delinquency fee.

(3) Fees are non-refundable.

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Barbara Klein
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SUBCHAPTER F. ENFORCEMENT

25 TAC §§300.601 - 300.606

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

The new rules implement Texas Health and Safety Code, Chapter 443.

§300.601. Violation of Department License or Registration Requirement.

(a) A person commits a violation if the person manufactures, processes, distributes, or sells a consumable hemp product into commerce without a license or registration required by the department under:

(1) §300.201 of this chapter (relating to License Application) for the manufacture, processing, or distributing of consumable hemp products; or

(2) §300.502 of this chapter (relating to Application) for the retail sale of consumable hemp products.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

§300.602. Prohibited Acts.

The following acts, and the causing of the following acts, within this state are unlawful and prohibited:

(1) the distribution in commerce of a consumable hemp product, if such consumable hemp product is contained in a package, or if there is affixed to that consumable hemp product a label that does not conform to the provisions of this chapter; and

(2) the engagement in the packaging or labeling of such consumable hemp products.

§300.603. Detained or Embargoed Article.

The department shall affix to an article that is a food, drug, device, cosmetic, or consumer commodity a tag or other appropriate marking that gives notice that the article is, or is suspected of being, adulterated or misbranded and that the article has been detained or embargoed if the department finds or has probable cause to believe that the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) is in violation of Texas Health and Safety Code, §431.084, §431.114, or §431.115.

§300.604. Destruction of Article.

(a) The department shall request court-ordered destruction of a sampled, detained, or embargoed consumable hemp product if the court finds the article is misbranded or adulterated.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant of the article shall pay the cost of the destruction of the article.

(d) If the article is being destroyed in whole or in part due to a THC content that meets the definition of a schedule I drug, the article must be destroyed by a reverse distributor authorized by the United States Drug Enforcement Agency.

§300.605. Correction By Proper Labeling or Processing.

(a) A court may order the delivery of a sampled article or a detained or embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of the department if:

(1) the decree has been entered in the suit;

(2) the costs, fees, and expenses of the suit have been paid;

(3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of department supervision.

§300.606. Administrative Penalty.

(a) The department may impose an administrative penalty against a person who holds a license or is registered under this chapter and who violates this chapter.

(b) The department shall notify a retailer of consumable hemp products of a potential violation concerning consumable hemp products sold by the registrant and provide the registrant an opportunity to resolve such violations made unintentionally or negligently within ten business days after the department notifies the registrant.

(c) The department shall assess administrative penalties based upon one or more of the following criteria:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require in relation to the violation.

(d) If the department determines that a violation has occurred, the department shall issue a notice of violation that states the facts on which the determination is based, including an assessment of the penalty.

(e) The notice of violation shall be in writing and sent to the license holder by certified mail. The notice must include a summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 business days after the date the person receives the notice of violation, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty, the department by order shall impose the recommended penalty.

(h) If the person charged with the violation does not respond in writing within 20 business days after the date the person receives the notice of violation, the department shall assess the penalty after determining that a violation occurred and the amount of penalty. The department shall issue an order requiring that the person pay the penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. AUTOMOBILE INSURANCE

DIVISION 3. MISCELLANEOUS INTERPRETATIONS

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.204, concerning Motor Vehicle Safety Responsibility, and repeal 28 TAC §5.208, concerning Disclosures for Named Driver Automobile Insurance Policies. The amendment and repeal implement changes made by House Bill 259, 86th Legislature, Regular Session (2019), which prohibits named driver auto policies.

EXPLANATION. HB 259 prohibits Texas automobile insurers from delivering, issuing for delivery, or renewing a named driver policy that was not also an operator's policy, defined by the bill as a policy that covers the named insured when operating an automobile the insured does not own. HB 259 amended Insurance Code Chapter 1952 to add Subchapter H, consisting of §§1952.351 - 1952.353, and repealed Insurance Code §1952.0545. Insurance Code §1952.351 provides definitions for the new subchapter and Insurance Code §1952.352 addresses applicability of the subchapter. Insurance Code §1952.353 prohibits an insurer writing automobile insurance in Texas from delivering, issuing for delivery, or renewing named driver auto policies. Insurance Code §1952.0545 established required disclosures for named driver policies. The prohibition applies to policies issued, issued for delivery, or renewed on or after January 1, 2020.

The proposed amendments to §5.204 and the proposed repeal of §5.208 update TDI's rules to reflect the changes to the Insurance Code made by HB 259. The proposed amendments and repeal will reduce confusion by eliminating the now unnecessary requirements for named driver automobile insurance. The proposed amendments and repeal also include minor grammatical and stylistic changes to conform to plain language guidelines.

Section 5.204. Motor Vehicle Safety Responsibility. Section 5.204 provides requirements for the standard proof of motor vehicle liability insurance card, which includes requirements for named driver policies. Because Insurance Code §1952.353 prohibits named driver policies, §5.204(a) is amended to remove a reference to the named driver disclosure that was required by Insurance Code §1952.0545, and §5.204(c) is amended to remove paragraph (9), which provides the text of a disclosure that must be included in a named driver policy. In addition, subsection (c) is amended to remove the words "all of."

Section 5.208. Disclosures for Named Driver Automobile Insurance Policies. Section 5.208 requires an insurer to provide disclosures to the purchaser of a named driver policy before accepting the premium for the policy, and it specifies the content of the disclosures the insurer must provide. Section 5.208 is proposed to be repealed because Insurance Code §1952.353 prohibits named driver policies.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendment and repeal are in effect, there will be no measurable fiscal impact on state and local governments because of enforcing or administering the sections. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment and repeal are in effect, Ms. Baker expects that administering the proposed amendment and repeal will have the public benefit of ensuring that rules are consistent with Insurance Code §1952.353 and do not contain provisions made unnecessary by that statute.

Ms. Baker expects that the proposed amendment and repeal will not increase the cost of compliance with the statute and rules, and that any costs are a result of the statute and not the rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. Before a state agency considers a rule adoption, Government Code §2006.002(a) requires state agencies to reduce the effect of adverse economic effects on small or micro companies or rural communities when it is legal or feasible to do so. TDI has determined that the proposed amendment and repeal will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because any costs associated with Insurance Code §1952.353 are a result of the statute and not the rule. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons, it simply removes unnecessary wording and it deletes a provision from one section and repeals another section that are no longer necessary due to a change in the Insurance Code. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments 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 agency;

--will not require an increase or decrease in fees paid to the agency;

--will not create a new regulation;

--will expand, limit, or repeal an existing regulation;

--will not increase or decrease the number of individuals subject to the rule's applicability; and

--will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5 p.m. Central time, on June 8, 2020. Send your comments by email to ChiefClerk@tdi.texas.gov; or to the Office of

the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request by email before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by TDI no later than 5 p.m. Central time, on June 8, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

28 TAC §5.204

STATUTORY AUTHORITY. TDI proposes amendments to §5.204 under Insurance Code §1952.353 and Insurance Code §36.001.

Insurance Code §1952.353 prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy unless the named driver policy is an operator's policy.

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.

CROSS-REFERENCE TO STATUTE. The proposed amendments to §5.204 implement Insurance Code §§1952.351 - 1952.353.

§5.204. Motor Vehicle Safety Responsibility.

(a) Applicability. This section does not apply to evidence of financial responsibility exhibited as an image displayed on a wireless communication device. Under Transportation Code §601.053(a)(2-a), the image must include the information required by Transportation Code §601.081, as provided by a liability insurer[~~, including the named driver disclosure that Insurance Code §1952.0545 requires~~].

(b) Form. For each motor vehicle insurance policy, the liability insurer must issue a standard proof of motor vehicle liability insurance form. The form must be titled "Texas Liability Insurance Card." The insurer may use its own form or TDI's prescribed form. TDI's prescribed form is available on the TDI website or upon request.

(c) Side A. Side A of the form must be written in at least 10-point type, except where otherwise specified in this subsection. The insurer must provide Side A in English, or in English and Spanish. Side A of the form must include [~~all of~~] the following (optional Spanish language in parentheses):

(1) the name and address of each insured or covered person (el nombre y la dirección del asegurado)

(2) the year, make, and model of each covered vehicle (el año, marca, y modelo de cada vehículo con cobertura); or a description of the types of vehicles the policy covers, and, at the company's option, the VIN. {Note: If the policy does not require the description of a vehicle, then this section of the ID card should contain the appropriate wording to describe the types of vehicles the policy covers, such as "any auto driven by the insured," "any auto driven with dealer plates," or similar descriptive language.}

(3) the effective date of the policy (la fecha de efectividad de la póliza)

(4) the expiration date of the policy (la fecha de vencimiento de la póliza)

(5) the policy number (el número de la póliza)

(6) the name and toll-free phone number of the insurer, if the insurer is required by statute to maintain a toll-free number for consumer inquiries (el nombre de la compañía de seguro y el número de teléfono gratis)

(7) the name and phone number of the agent, if applicable (el nombre del agente y el número de teléfono)

(8) the following statement in at least eight-point type, "This policy provides at least the minimum amounts of liability insurance required by the Texas Motor Vehicle Safety Responsibility Act for the specified vehicles and named insureds and may provide coverage for other persons and vehicles as provided by the insurance policy." If the insurer provides Side A in Spanish, the Spanish statement must read, "Esta póliza provee por lo menos las cantidades mínimas de seguro de responsabilidad civil que es requerida por la ley de responsabilidad para la seguridad de los vehículos motorizados de Texas (Texas Motor Vehicle Safety Responsibility Act) para los vehículos especificados y para los asegurados nombrados y puede proveer una cobertura para otras personas y vehículos según lo proporcionado en la póliza de seguro."

[~~(9) for a named driver policy under Insurance Code §1952.0545, the following statement, which must comply with the Business and Commerce Code §1.201(b)(10)(B) definition of conspicuous, "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY." If Side A contains Spanish, the warning in Spanish should read, "ADVERTENCIA: ESTA PÓLIZA NO PROVEE COBERTURA A LAS PERSONAS QUE RESIDEN EN EL HOGAR DEL ASEGURADO QUE NO SON MENCIONADAS EN LA PÓLIZA DE SEGUROS."~~]

(d) Side B. Side B of the form must be written in at least 10-point type, except where otherwise specified. Side B must contain the following statements, in this order, and formatted as shown in this subsection (optional Spanish language in parentheses; not italicized):

(1) Texas Liability Insurance Card (Tarjeta de Seguro de Responsabilidad Civil de Texas) *(at least 12-point, boldfaced type)*

(2) Keep this card. (Guarde esta tarjeta.) *(boldfaced type)*

(3) IMPORTANT: You must show this card or a copy of your insurance policy when you apply for or renew your: (IMPORTANTE: Usted debe mostrar esta tarjeta o una copia de su póliza de seguro cuando solicite o renueve su:) *("IMPORTANT" in boldfaced capital letters)*

(A) Motor vehicle registration (Registro del vehículo motorizado)

(B) Driver's license (Licencia de conducir)

(C) Motor vehicle safety inspection sticker. (Etiqueta de inspección de segurida para su vehículo.)

(4) You may also be asked to show this card or your policy if you have an accident or if a peace officer asks to see it. (También se puede pedir que usted muestre esta tarjeta o su póliza si tiene un accidente o si se la pide un oficial de policía.)

(5) All drivers in Texas must carry liability insurance on their vehicles or otherwise meet legal requirements for financial responsibility. If you do not meet your financial responsibility requirements, you could be fined up to $1,000, your driver's license and motor vehicle registration could be suspended, and your vehicle could be impounded for up to 180 days (at a cost of $15 per day). (Todos los conductores en Texas deben tener un seguro de responsabilidad civil

para sus vehículos, o de lo contrario deben cumplir con los requisitos legales de responsabilidad financiera. Si usted no cumple con los requisitos de responsabilidad financiera, podría estar sujeto a pagar una multa de hasta $1,000, mas la suspensión de su licencia de conducir y la suspensión del registro del vehículo, y además su vehículo podría ser confiscado por hasta 180 días (a un costo de $15 por día).)

(e) The insurer must issue Side B in English. The insurer must also make Side B available in Spanish, either on the same card as the English version, or on a separate card. If the insurer initially provides only the English version and offers to provide the Spanish version on a separate card when the insured requests it, the insurer must include with the English version the following notice in Spanish, in at least 10-point type, formatted as shown in this subsection, with or without the optional bracketed text, "IMPORTANTE: Si usted desea una tarjeta oficial de comprobante de seguro escrita en español, comuníquese con su agente de seguros a este número {o dirección de correo electrónico}." The notice must be followed by the company's toll-free number, the insured's agent's number, or any other applicable number, and, at the insurer's option, the agent's or company's email address.

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

Filed with the Office of the Secretary of State on April 27, 2020.

TRD-202001670
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 676-6584

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28 TAC §5.208

STATUTORY AUTHORITY. TDI proposes the repeal of §5.208 under Insurance Code §1952.353 and Insurance Code §36.001.

Insurance Code §1952.353 prohibits an insurer from delivering, issuing for delivery, or renewing a named driver policy unless the named driver policy is an operator's policy.

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.

CROSS-REFERENCE TO STATUTE. The repeal of §5.208 implements amendments to Insurance Code §§1952.351 - 1952.353 and the repeal of §1952.0545.

§5.208. Disclosures for Named Driver Automobile Insurance Policies.

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

Filed with the Office of the Secretary of State on April 27, 2020.

TRD-202001669
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

SUBCHAPTER N. FEES FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

30 TAC §336.1310

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §336.1310.

Background and Summary of the Factual Basis for the Proposed Rule

Texas Health and Safety Code (THSC), §401.245, requires the TCEQ by rule to adopt and periodically revise party-state compact waste disposal fees. Section 336.1310 sets the fees for disposal of low-level radioactive waste (LLRW).

In 2017, House Bill (HB) 2662, passed during the 85th Texas Legislature, reduced the disposal surcharge for non-compact generators from 20% to 10% and suspended the 5% state fee for all compact waste until September 1, 2019. During the 86th Texas Legislature (2019), an amendment was made to Senate Bill (SB) 1804 that would retain the reduction of this surcharge and the suspension of the state fee until September 1, 2021. Because SB 1804 was vetoed, the surcharge reverted back to 20% and the 5% state fee was reinstated on September 1, 2019.

The licensee and operator of the Compact Waste Disposal Facility (CWF) in Andrews County, Texas, originally requested a similar reduction to the curie inventory charge (mCi) among other items as part of a rulemaking petition in order to be competitive and to generate sufficient funds so that they do not operate at a financial loss. The rulemaking petition was withdrawn and resubmitted as a request to the executive director to initiate rulemaking for good cause, consistent with the rule requirements in §336.1311.

Therefore, the executive director has taken all of these factors into consideration and determined that the reduction in the curie inventory charge is appropriate at this time.

Section Discussion

§336.1310, Rate Schedule

The commission proposes to amend §336.1310 to reduce the mCi from $0.40 mCi to $0.05 mCi. The commission also proposes to amend §336.1310 to correct the acronym LLW to LLRW to be consistent with the current definition in §336.2.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rule is in effect, fiscal implications are probable for the agency and for other units of state or local government as a result of administration of the proposed rule; however due to market competition, the implications cannot be determined.

This proposed rulemaking would lower the curie inventory fee charged to out-of-compact customers by the Compact Waste

Disposal Facility in Andrews County. The fee is one part of the price or contracted rate that a customer pays to dispose of waste at the facility. The curie inventory fee is not collected by the state of Texas or local government. The revenue paid to the state is a percentage surcharge of the contracted rate. Without regard to market demands and competitive options for waste disposal, one could assume that this proposed rulemaking would result in decreased revenue for the state and local government; however, this analysis assumes that market demands would influence the volume of waste received at the facility, as it has been demonstrated in the past.

The proposed rulemaking would lower the cost to the waste generator or customer, making the facility more competitive in the market. This may result in an increase or decrease to state and local revenue depending on the decisions made by the waste generator or customer.

Per the THSC, the revenue paid to the state consists of the surcharge for the disposal of nonparty compact waste equal to 20% of the total contracted rate and a 5% surcharge on the gross receipts from compact waste or federal facility waste deposited at the facility. These two fees were temporarily decreased during the 85th Legislative Session by the passage of HB 2662 for a period of two years, after which, the fees returned to their original amount on September 1, 2019. The state also assesses a 1.25% surcharge to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission. An additional 5% surcharge from the gross receipts from compact waste and federal facility waste is collected and transferred to Andrews County, a unit of local government.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public should not be affected by the proposed rulemaking as it should not affect the health and safety aspects of the facility.

Local Employment Impact Statement

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

Rural Community Impact Statement

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking may increase or decrease surcharge revenue paid to the state, but the impact cannot be determined. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule amendment to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to modify the mCi and may offset the increase in the total disposal fee for out-of-compact generators due to the increase of surcharges on this waste that went into effect on September 1, 2019. The reduction of the curie inventory fee in the LLRW disposal rate table of §336.1310 would require the license holder of the CWF to adjust the rate setting for generators as follows. The LLRW fee adjustment would result in a lowering of the maximum rate that the license holder can charge Compact generators of LLRW and a lowering of the minimum rate that the license holder can charge Out-of-Compact generators of LLRW.

Further, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed amendment is not expected to be significant with respect to the economy as a whole or a sector of the economy; therefore, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state

and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements because the proposed amendment: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rule; and (4) is not an adoption of a rule solely under the general powers of the commission as the proposed amendment is required by THSC, §401.245. THSC, §401.245, requires the TCEQ by rule to adopt and periodically revise party-state compact waste disposal fees.

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

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an assessment of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The proposed rulemaking amends §336.1310 to adjust one fee charged in the rates. The specific intent of the proposed rulemaking is to modify the mCi to offset the increase in the total disposal fee for out-of-compact generators due to the increase of surcharges on this waste that went into effect on September 1, 2019. The reduction of the mCi fee on LLRW disposal rate schedule solely impacts the license holder of the CWF in rate setting for generators as follows. The LLRW fee adjustment would result in a lowering of the maximum rate that the license holder can charge Compact generators of LLRW and a lowering of the minimum rate that the license holder can charge Out-of-Compact generators of LLRW. The commission's analysis revealed that amending the fee in the rate table section of §336.1310 is consistent with THSC, §401.245, which requires the TCEQ by rule to adopt and periodically revise party-state compact waste disposal fees.

A "taking" under Texas Government Code, Chapter 2007 means a governmental action that affects private real property in a manner that requires compensation to the owner under the United States or Texas Constitution, or a governmental action that affects real private property in a manner that restricts or limits the owner's right to the property and reduces the market value of affected real property by at least 25%. Because no taking of private real property would occur by amending the maximum disposal rate that a licensee may charge a party state generator for disposal to reduce the mCi, the commission determined that promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rule because the proposed rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there would be no reduction in real property value as a result of the rulemaking. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-009-336-WS. The comment period closes on June 9, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Hans Weger, Radioactive Materials Section, (512) 239-6465.

Statutory Authority

The amendment is proposed under the Texas Radiation Control Act, Texas Health and Safety Code (THSC), §401.011, which provides the commission the authority to regulate and license the disposal of radioactive substances; and THSC, §401.245, which requires the commission, by rule, to adopt and periodically revise party state compact waste disposal fees. The proposed amendment is also authorized by Texas Water Code (TWC), §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state.

The proposed amendment implements THSC, §401.245.

§336.1310. Rate Schedule.

Fees charged for disposal of party state compact waste must be equal to or less than the compact waste disposal fees under this section. Additionally, fees charged for disposal of nonparty compact waste must be greater than the compact waste disposal fees under this section.

Figure: 30 TAC §336.1310

[~~Figure: 30 TAC §336.1310~~]

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 30, 2020.

TRD-202001718
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 7, 2020
For further information, please call: (512) 239-1806

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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 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.9

The State Board of Dental Examiners withdraws the emergency adoption of the amendment to §108.9, which appeared in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2767).

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

TRD-202001739
Casey Nichols
General Counsel
State Board of Dental Examiners
Effective date: May 1, 2020
For further information, please call: (512) 305-9380

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board withdraws the emergency adoption of the amendment to §190.8, which appeared in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2768).

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

TRD-202001737
Scott Freshour
General Counsel
Texas Medical Board
Effective date: May 1, 2020
For further information, please call: (512) 305-7016

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §13.5

The Comptroller of Public Accounts withdraws the proposed new §13.5, which appeared in the January 10, 2020, issue of the *Texas Register* (45 TexReg 327).

Filed with the Office of the Secretary of State on April 21, 2020.

TRD-202001550
Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Effective date: April 21, 2020
For further information, please call: (512) 475-0387

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER C. PREVIOUS PARTICIPATION AND EXECUTIVE AWARD REVIEW AND ADVISORY COMMITTEE

10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, without changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 672). The rules will not be republished. The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action.

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.

1. Mr. Wilkinson has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous readoption making changes to an existing activity, completing previous participation reviews prior to awarding Department funds or approving ownership transfers.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, completing previous participation reviews prior to awarding Department funds or approving ownership transfers.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal 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 repeal 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 repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will 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). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed 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 repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 31, 2020, and March 2, 2020. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comment was received.

The Board adopted the final order adopting the repeal on April 23, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

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 27, 2020.

TRD-202001674
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 17, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 475-1762

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10 TAC §§1.301 - 1.303

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC, Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, with changes to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 673). The purpose of the proposed new sections is to streamline the process for conducting previous participation reviews. The new sections add a new definition for Actively Monitored Development; more closely align the consideration of control with other Department rules; clarify that if both Applicants are considered a Category 2 when evaluated separately and their Combined Portfolio is a Category 3, the Application will be considered a Category 2; provide that previously approved applicants are approved provided that conditions have not been violated and there have been no new events of noncompliance; eliminate the requirement for the compliance division to recommend denial for all Category 3 applicants; and eliminate the connection between events of noncompliance and possible conditions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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. Wilkinson has determined that, for the first five years the new rule will 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, previous participation reviews prior to awarding Department funds or approving ownership transfers.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.057.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for evaluating applicant's previous participation in Department administered programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is an owner or participant, the new rule provides for a more clear, transparent process for doing so and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to applicants, not municipalities.

3. The Department has determined that there will be no 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 nor 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule only relates to the evaluation of the past performance of owners and administrators of Department programs when they are applying for new funds, 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). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between January 31, 2020, and March 2, 2020. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

1. Lisa Stephens- Saigebrook Development

2. The Texas Affiliation of Affordable Housing Providers

3. Cynthia Bast- Locke Lord

4. San Antonio Housing Authority

In the Comment Summaries and Staff Responses, please note the italicized portion for changes. Deleted text will not be shown.

§1.301(b)

COMMENT SUMMARY: Commenter 2 recommended deletion of the term Actively Monitored Development because there are times when a property may need to respond to the Department before the first monitoring visit. As drafted, the rule could be interpreted to include as an event of noncompliance non responsiveness prior to the Development being considered as part of the portfolio.

STAFF RESPONSE: To avoid confusion the definitions of Actively Monitored Development and Events of Noncompliance were updated as follows:

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance for monitoring purposes as further provided for in §10.803 of this Title or in the table provided at §10.625 of this Title (relating to Events of Noncompliance).

§1.301(b)

COMMENT SUMMARY: Commenter 3 noted that there may be a conflict between the rule and 2 CFR Part 180 regarding the term Affiliate.

STAFF RESPONSE:

The Department does not believe there is a conflict between the definitions because an Applicant for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA will have to meet both definitions.

§1.301(b)

COMMENT SUMMARY: Commenter 3 suggested that the definition of Person be eliminated from this rule and just refer to other sections of the TAC.

STAFF RESPONSE:

The Department believes this definition provides clarity and is retaining it.

§1.301(c)

COMMENT SUMMARY: Commenter 2 recommended that events of noncompliance remain on a Development's compliance history after correction for a period of time equal to the frequency of monitoring.

STAFF RESPONSE: The commenter noted the difference between monitoring frequency between tax-exempt bond properties and housing tax credit properties. Given that there are a number of different factors that affect the monitoring schedule, (for example, due to COIVID-19 most monitoring at this time is postponed) staff does not recommend that issues remain on a Development's compliance history based on the frequency of monitoring.

§1.301(c)

COMMENT SUMMARY: Commenters 2 and 4 opposed the removal of the "control form". Commenter 3 recommended that either the form remain or the Annual Owner's Compliance Report be modified to identify the Controlling Persons, using an organizational chart similar to the chart used if filing for an application under the current rules.

STAFF RESPONSE: Staff recommends approval of the rule allowing the use of the control form but with the following changes based on the requirements of 2 CFR Parts 180 and 200, the Uniform Grant Management Standards, and the Texas Single Audit Act.

(11) Except for Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation. The Department may require additional information to support the Control Form including but not limited to partnership agreements or other legal documents.

§1.031(e)

COMMENT SUMMARY: Commenter 2 suggested that an applicant's category because of non-responsiveness should be a percentage of the portfolio size.

STAFF RESPONSE: Staff agrees and proposes the following language to §1.301(e)(2)(C) for Category 2:

"Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitored Developments in the Combined Portfolio."

Staff agrees and proposes the following language to §1.301(e)(2)(C) for Category 3:

"Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in in the Combined Portfolio."

§1.301(c)

COMMENT SUMMARY: Commenter 3 suggested that "Findings, Concerns and Deficiencies" should be eliminated because they are not defined in this rule.

STAFF RESPONSE: Staff updated this rule to note that Events of Noncompliance, and Findings, Concerns and Deficiencies are further described in 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, and 10 TAC §10.803 or 10 TAC §20.3.

§1.301(g)(1) and §1.301(h)(1)

COMMENT SUMMARY: Commenter 3 noted that the rule was vague about which division would be making certain recommendations.

STAFF RESPONSE: The rule was written to provide some flexibility so that the most appropriate division can contact the applicant and inform them of the EARAC recommendation.

§1.303(g)(4)

COMMENT SUMMARY: Commenter 1 recommends that EARAC and an applicant meet if EARAC is going to recommend denial of an award.

STAFF RESPONSE: The rule as proposed and adopted has the possibility that an applicant and EARAC could meet if there is a dispute and EARAC is going to recommend denial. However, since it may not always be necessary or possible to have an in person meeting with all EARAC members the rule is not being changed based on this comment.

General

COMMENT SUMMARY: Commenter 3 suggested several non substantive changes throughout the rule to improve readability.

STAFF RESPONSE: Staff agrees and made the changes.

The Board adopted the final order adopting the new rules on April 23, 2020.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers.

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures used by the Department to comply with Tex. Gov't Code §§2306.057, and 2306.6713 which require the Compliance Division to assess the compliance history of the Applicant and any Affiliate, the compliance issues associated with the proposed or existing Development, and provide such assessment to the Board. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards (UGMS), where applicable.

(b) Definitions. The following definitions apply only as used in this Subchapter. Other capitalized terms used in this Section have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in §11.1 of this Title (relating to General items relating to Pre-Application, Definitions, Threshold Requirements and Competitive Scoring). For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180.

(3) Applicant--In addition to the definition of applicant in §11.1 of this Title, in this Subchapter, the term applicant includes Persons requesting approval to acquire a Department monitored Development.

(4) Combined Portfolio--Actively Monitored Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by Subsection (c) of this Section.

(5) Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in §10.602 or §10.803 of this Title (relating to Notice to Owners and Corrective Action Periods and Compliance and Events of Noncompliance, respectively), including any permitted extension or deficiency period.

(6) Events of Noncompliance--Any event for which an Actively Monitored Development may be found to be in noncompliance for monitoring purposes as further provided for in §10.803 of this Title or in the table provided at §10.625 of this Title (relating to Events of Noncompliance).

(7) Monitoring Event--An onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

(8) Person--"Person" is as defined in 10 TAC Chapter 11 (relating Qualified Allocation Plan (QAP)). For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined as required by 2 CFR Part 180.

(9) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Items Not Considered. When conducting a previous participation review the items in Paragraphs (1) through (10) of this Subsection will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (as described in, 10 TAC §6.2, 10 TAC §7.2, 10 TAC §10.625, 10 TAC §10.803 and 10 TAC §20.3) that were corrected over three years from the date the Event is closed;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's period of Control if the event(s) is currently uncorrected and the Applicant has had Control for less than one year, or if the Owner is still within the timeframe of a Department-approved corrective action from the Department's Enforcement Committee;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household In-

come above income limit upon initial Occupancy" for units at Developments participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period;

(9) Events of failure to respond within the Corrective Action Period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under Subsection (e)(2)(C) and (e)(3)(C) of this Section;

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e); and

(11) Except for Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation. The Department may require additional information to support the Control Form including but not limited to partnership agreements or other legal documents.

(d) Applicant Process. Persons affiliated with an Application or an Ownership Transfer request must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions, but for Applications no later than the Administrative Deficiency deadline. For an Ownership Transfer request, a recommendation will be delayed until the required forms or responsive information is provided.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or Ownership Transfer request using the criteria in Paragraphs (1) through (3) of this Subsection. Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2.

(1) Category 1. An Application will be considered a Category 1 if the Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period totals at least three but is less than 50% of the number of Actively Monitored Developments in the Combined Portfolio; or

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or submitted during the seven day period referenced in Subsection (f) of this Section will be reviewed and the Category determination may change as appropriate; or

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event; however, the number of times is less than 25% of the number of Actively Monitoring Developments in the Combined Portfolio; or

(D) The Applicant is required to have a Single Audit and a relevant issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of Actively Monitored Developments in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of Actively Monitored Developments in the Combined Portfolio. Corrective action uploaded to CMTS or submitted during the seven day period referenced in Subsection (f) of this Section will be reviewed and the Category determination may change as appropriate;

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period to a Monitoring Event and the number of times is equal to or greater than 25% of the number of Actively Monitored Developments in the Combined Portfolio;

(D) Any Development Controlled by the Applicant has been the subject of an agreed final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any Development currently Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(G) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(H) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department related to any Development Controlled by the Applicant;

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are 30 days or more

past due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Notification to Applicant and EARAC. The Compliance Division will notify Applicants of their compliance status from the categories identified in Paragraphs (1) to (4) of this Subsection.

(1) Previously approved. If EARAC or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of this Subchapter (relating to Executive Award and Review Advisory Committee (EARAC))) such conditions have not been violated, and no new Events of Noncompliance have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions.

(2) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.

(3) Category 2 and Category 3. Category 2 and 3 Applicants will be informed by the Compliance Division that the Application is a Category 2 or 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

(4) The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant or entity requesting an Ownership Transfer will be notified of the debarred status and will be given the opportunity (subject to other Department rules) to remove and replace the Affiliate, Board member, or Person so that the transfer or award may proceed.

(g) Compliance Recommendation to EARAC for Awards.

(1) After taking into consideration the information received during the seven-day period, Category 2 Applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only) or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be notified if their award is recommended for denial or approval with conditions.

(3) An Applicant that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this Subchapter.

(h) Compliance Recommendation for Ownership Transfers. After taking into consideration the information received during the seven-day period the results will be reported to the Executive Director with a recommendation of approval, approval with conditions, or denial. If the Executive Director determines that the request should be denied, or approved with conditions and the requesting entity disagrees, the matter may be appealed to the Board under §1.7 of this Title (relating to Appeals).

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter.

(a) Purpose and applicability. This Section applies to program awards not covered by §1.301 of this Subchapter (relating to Previous Participation Reviews for Multifamily Awards and Ownership Transfers). With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this Section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this Section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this Title (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter (relating to Single Audit Requirements). If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;

(5) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of this Section if the requirement to submit such information is made in a NOFA or Application for funding; and

(6) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this Chapter (relating to Action by Department if Outstanding Balances Exist), and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant;

(2) Information contained in the most recent Single Audit;

(3) Issues identified in Subsection (d) of this Section;

(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period); and

(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to EARAC.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable (for Compliance purposes) without EARAC review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven day period, the Compliance Division will make a final recommendation regarding the award. If recommending denial or award with conditions, the Applicant will be notified of their right to file a dispute under §1.303 of this Subchapter.

(h) Consistent with §1.403 of Subchapter D of this Chapter, (relating to Single Audit Requirements), the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any Applicant or entity who has an Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of an Affiliate, Board Member or Person and will be given an opportunity to remove and replace that Affiliate, Board Member or Person so that funding may proceed. However, individual Board Member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

(j) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(k) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration Subsection (i) of this Section.

(l) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve.

§1.303. Executive Award and Review Advisory Committee (EARAC).

(a) Authority and Purpose. The Executive Award and Review Advisory Committee (EARAC) is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c), EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this Chapter. It is also the purpose of this rule to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations. Capitalized terms used in this Section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(b) EARAC may meet in person or by email to make recommendations on awards, discuss deficiencies needed to make recommen-

dations, discuss Disputes, and address inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, EARAC has not identified a rule or statutory-based impediment that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this Section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of proposed conditions. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this Section, regarding EARAC Disputes.

(4) Category 3 applicants that will be recommended for denial will be notified and informed of their right to dispute the negative EARAC recommendation as described in Subsection (g) of this Section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single Development, a Combined Portfolio, or a portion of a Combined Portfolio if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this Section may be customized to provide specificity regarding affected Developments, Persons or dates for meeting conditions. Category 2 or Category 3 Applications may be awarded with the imposition of one or more of the conditions listed in Subsection (e) of this Section.

(e) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within 30 calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a one-time review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in (A), (B), (C) and/or (D) of this Paragraph (only for Applications made and reviewed under §1.301 of this Subchapter) and/or (E) for applications made and reviewed under §1.302 of this Subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association;

(B) 1st Thursday Income Eligibility Training conducted by TDHCA staff;

(C) Review one or more of the TDHCA Compliance Training Presentation webinars:

(i) 2012 Income and Rent Limits Webinar Video;

(ii) 2012 Supportive Services Webinar Video;

(iii) Income Eligibility Presentation Video;

(iv) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(v) Most current Tenant Selection Criteria Presentation;

(vi) Most current Affirmative Marketing Requirements Presentation;

(vii) Fair Housing Webinars (including but not limited to the 2017 FH webinars);

(D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or

(E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to, weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.

(11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted to the Department upon request.

(12) Within 60 days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Appli-

cant but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.

(14) Applicant/Owner is required to provide all documentation relating to a Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.404 of this Title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(f) Failure to meet conditions.

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) If any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for debarment.

(g) Dispute of EARAC Recommendations.

(1) The Appeal provisions in §1.7 of this Title relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute that may be considered by EARAC or may be presented to the Board without further EARAC consideration consistent with Paragraph (3) of this Subsection.

(A) Their category as determined under §1.301(f) of this Subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant or potential Subrecipient may submit to the Department (to the attention of the Chair of EARAC), their Dispute detailing:

(A) The condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) The reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;

(C) If the Dispute relates to conditions, any suggested alternate condition language;

(D) If the Dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to EARAC.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice recommendation of denial or award with conditions has been provided. The Dispute must include any materials that the Applicant wishes EARAC and/or the Board to consider. An Applicant may request to meet with EARAC and EARAC is not obligated to meet with the Applicant.

(5) EARAC is not required to consider a Dispute prior to making its recommendation to the Board.

(6) If an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least seven calendar days prior to the required posting date of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the Department with such materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close of business of the fifth calendar day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the Board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this Chapter (relating to Public Comment Procedures). There is no assurance the Board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board and EARAC will make reasonable efforts to accommodate properly and timely filed Disputes under this Subsection.

(h) Board Discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by EARAC, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

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 27, 2020.

TRD-202001675

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 17, 2020
Proposal publication date: January 31, 2020
For further information, please call: (512) 475-1762

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CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.7

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §8.7(g), relating to tenant selection and screening, without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8141). The rule will not be republished. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect, the amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.

2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The amendment does not require additional future legislative appropriations.

4. The amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation.

6. The amendment will not repeal an existing regulation.

7. The amendment will not increase or decrease the number of individuals subject to the rule's applicability.

8. The amendment will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this amendment and determined that the amendment 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 amendment 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 amendment as to its possible effects on local economies and has determined that for the first five years the amendment 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 amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended 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 amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 20, 2019, and January 20, 2020. No comments were received regarding the proposed rule and the rule is being adopted without changes.

The Board adopted the final order authorizing the adoption of the amendments on April 23, 2020.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

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 27, 2020.

TRD-202001667
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 17, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 475-1762

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.602, 10.605, 10.607, 10.609 - 10.613, 10.615 - 10.618, 10.622 - 10.625

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC §10.602 Notice to

Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625. The department is adopting 10.611, 10.612, 10.622, and 10.624, with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8147). These rules will be republished. The rest are adopted without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register.* Those rules will not be republished.

The purpose of the amendments is to update the rule to delete unnecessary requirements, delete sections of the rule pertaining to functions that are being moved in the Department, to provide clarity for changing household designations, to comply with Tex. Gov't Code §434.214 regarding requirements related to screening for veteran status, to add clarity regarding unit mix requirements for the HOME, TCAP RF and NHTF developments, and to limit rent increases to once every 12 months.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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. Wilkinson has determined that, for the first five years the amendments will be in effect:

1. The amended rule does not create or eliminate a government program.

2. The amended rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The amended rule changes do not require additional future legislative appropriations.

4. The amended rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amended rule is creating a new regulation, which is being created to comply with Texas Gov't Code §434.214, which requires Department's Administered Developments to screen for Veteran status.

6. The amended rule will not expand, limit, or repeal an existing regulation.

7. The amended rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The amended rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for monitoring the activities of multifamily developments awarded funds through various Department programs. Other than, in the case of a small or micro-business, that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because the rule is not directly applicable to rural communities there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended rule does not contemplate nor 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule is updating an existing rule, 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). Robert Wilkinson, Executive Director, has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the change that may have an economic impact is proposed for Developments that apply for funding after January 1, 2021, and if there is any cost, it can be offset by increased funding.

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 amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments because the amendments carry on an existing activity.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 27, 2019, and January 27, 2020. Comments

regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

1. Robert Dryman, President, Brownstone Residential, LLC

2. Charles Holcomb, President, Community Retirement Centre, Inc

3. Barry Palmer with Coats | Rose, A Professional Corporation

4. Danna Hoover, Vice President, Hamilton Valley Management, Inc

5. Cherno M. Njie, President, Songhai Development Company, LLC

6. Jean Maria Latsha, Vice President - Development, Pedcor Investments, A LLC

7. Katherine Saar, Vice President, Leslie Holleman & Associates, Inc.

8. Elizabeth and Vernon Young, Artisan/American Corporation

9. Sandy Rollins, Texas Tenant's Union

10. Patrick A. Barbolla, Fountainhead Management, Inc.

11. Jen Brewerton, Vice President of Compliance, Property Management Dominium

12. Jim Beats, Diamond Property Consultants, Inc.

13. Billy Bryant, Mayfair Management Group, LP

14. Drew Hoskins, Encore Residential, LLC

15. Juanita Sanchez, Sanchez Compliance & Consulting

16. Mike Robinson, President, Robinson Capital & Investment, Inc.

17. Dena Moreland, Director of Compliance, Accolade Property Management

18. Nancy McIlhaney, Director of Compliance, Pathways Asset Management, Inc.

19. Margaret M. Jones, SVP Finance, Palladium USA International, Inc.

20. Marnie Geurin, Operations Director, DMA Properties, LLC

21. Sandy Hoy, TAA General Counsel, Texas Apartment Association

22. Jen Brewerton, TAAHP - Texas Affiliation of Affordable Housing Providers

23. Cody J. Hunt, Corporate Controller, Palladium USA International, Inc

24. Fred D'Lizarrage, Senior Vice President -COO, Palladium USA International, Inc.

25. Joan Maxwell, Senior Vice President, Palladium USA International, Inc.

26. Keith Pomykal, Vice President, Investments, Palladium USA International, Inc.

27. Kim Schwimmer, Managing Member, The Land Experts, LLC

28. Scott E. Johnson, Senior Vice President, Palladium USA International, Inc & President | Catalyst Builders, Inc.

29. Thomas E. Huth, President and CEO, Palladium USA International, Inc

30. Wade Roper, Project Development Manager, Palladium USA International, Inc

31. Saleem A. Jafar, Odyssey Residential Holdings, LP

32. Wanda White, Compliance Director, Lifestyle Property Management

33. Chris Lischke, Ledg Capital, LLC

34. Lauren Loney, Staff Attorney, Advocacy Co-Director, Texas Housers

35. W. Barry Kahn, Hettig/Kahn Development Corp

36. Jason Arechiga, NRP Management.

Rule Section §10.611. Determination, Documentation and Certification of annual income

COMMENT SUMMARY: Commenter 4 proposed three additional scenarios when an owner should be permitted to change a household's designation.

Commenter 10 opposed and expressed concern with the proposed changes. He noted that property managers are required to constantly keep track of the income level of tenants and believed that this change would result in inaccurate reporting of the income levels served by the program. He also believed this rule would prevent a 60% unit from later being designated at 50% and that a 30% household could not be changed until the household went over income. He also commented on the available unit rule. Lastly, he believes that the proposed rule would increase the workload of property managers.

Commenter 10 also noted that the proposed rule requires all Multifamily Direct Loan (MFDL) properties to obtain two months of source documentation evidencing annual income, not just MFDL properties funded on or after August 23, 2013, and requested the change not be adopted.

Commenter 17 suggested that this rule should be stricken because there are additional times that a household's designation should be changed. She used an example of a property layered with HOME and Housing Tax Credits when a household goes over income. Another example she provided is when a household is improperly designated as a 50% household due to an error by property management.

Commenter 22 opposes limiting an owner's ability to change a household's designation outside of federal requirements. They believe that the proposed rule would not allow owners to self-correct noncompliance, re-designate households during re-syndication, remove designations as programs applicable to a property are no longer required, and that the rule would limit flexibility with owners that elect the average income minimum set aside. Further they believe there is a potential conflict with the waitlist requirement under §10.615(b).

Commenter 34 supported the proposed changes to this section of the rule and suggested "...that TDHCA staff be more proscriptive in what this policy would require. For example, every written policy for changing income designations should include a written notice that (1) gives a minimum 90-day notice to tenants that their income designation will be change; (2) provides information explaining that if their income designation changes, how much their rent will increase; and (3) ensures a guaranteed face-to-face meeting with the property manager to explain what is happening."

STAFF RESPONSE:

In response to Commenter 4, all three scenarios requested are already addressed in rule; the first scenario is covered by §10.611(c)(3), and the second and third scenarios are covered by §10.615 and §10.611(c)(2). No changes are being made based on comment from Commenter 4.

In response to commenter 10, staff agrees that managers are required to constantly keep track of the income level of tenants to maintain compliance with program requirements. This rule will not impact how the Department reports the income levels of households served by TDHCA administered properties. Staff reports resident data based on actual household income; not owner designation. This section of the rule read in harmony with §10.615 addresses the commenters concerns about redesignations to a lower level. The requirement of all MFDL properties to obtain two months of source documentation to evidence annual income is a federal requirement. No changes are being made based on comment from Commenter 10.

In response to Commenter 17, if a property is layered with HOME and Housing Tax Credits and a household goes over 80% income limit, the property must comply with the program requirements which are covered in §10.611(c)(1). The property must comply with the available unit rule and lease the next available unit to a HOME eligible household (if the units are floating). If the household has not exceeded 140% of the income limit established by the minimum set aside for the Housing Tax Credit program, the household's HTC designation cannot be removed. Likewise, if property management makes an error and designates a household at 50% that should have been a 60% household, property management cannot removed this household's designation unless they have a written policy and procedure to address such errors. No changes are suggested in response to Commenter 17.

To address any confusion or possible conflict noted by Commenter 22 between §10.611 and §10.615(b) the following language is included in the adopted rule:

(6) The household's designation is being lowered.

Other changes are not needed because the rule permits changing designations to self-correct, at the time of re-syndication, when programs are no longer applicable and to address changes in household income for properties that elect the average income minimum set-aside, if the owner has adopted a written policy stating changes in household income.

Except to the extent the comments address notice about written policies described in Subchapter G, the changes suggested by Commenter 34 are beyond the scope of this rulemaking. Staff may consider these comments in future rulemaking.

§10.612 Tenant File Requirements

COMMENT- Commenter 10 stated that TDHCA is misreading Tex. Gov't Code §434.212 by requiring owners to implement a new or revised application form that screens applicants for veteran status and include a specific statement regarding potential benefits information for veterans.

Commenter 10 also states, "It seems counterproductive to have private owners inquire about veteran status when neither priority nor preference can be given to veterans. Indeed, if developments are required to ask about veteran status and include the proposed language, owners should also indicate that this is just a public service announcement and no special veteran services will be offered. Remove this proposal from the rule pending a request from TDHCA for an opinion of the Texas Attorney General whether this requirement applies to applicants for services directly from TDHCA or whether it also applies to previously subrecipients."

Commenter 34 requested that tenant acknowledgement forms include an acknowledgment that leasing staff verbally explained these documents to potential tenants and that each document be provided in the proper language for the tenant at issue.

STAFF RESPONSE- TDHCA's Legal Division has determined that asking this question and providing the information is a requirement for TDHCA monitored developments. Staff does not recommend changes based on this comment, and finds it is not necessary to seek an opinion from the Texas Attorney General. However, staff proposes the following change to allow owners ample time to update their rental applications:

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). Beginning January 1, 2021, the application must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at https://veterans.portal.texas.gov/.

The changes suggested by Commenter 34 are beyond the scope of this rulemaking. Staff may consider these comments in future rulemaking.

Rule Section §10.613(h). Lease Requirements

COMMENT SUMMARY: Commenter 10 believes that there is an error in this sentence:

"All NHTF, TCAP RF, NSP, [811 PRA,] and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e)."

Commenter believes that it should not be the Department who determines if a tenant qualifies for an emergency transfer.

STAFF RESPONSE: 24 CFR §92.359(g) and 24 CFR §93.356(f) require the Department to determine if the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). The Department will enforce this as it would any other program requirement. The Department has Violence Against Women Act resources on its website at https://www.tdhca.state.tx.us/pmcomp/forms. The Department has not made any changes to this subsection as a result of this comment.

Rule Section §10.615. Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments

COMMENT SUMMARY: Commenter 9 stated: "Lower income tenants without housing vouchers often struggle to make ends meet when they are living in a unit restricted at 50% or 60% of the Area Median Income (AMI). Despite increases in the AMI, we see many people being left behind. For example, the average Social Security check last year was $1,461 per month, and many one-bedroom tax credit units are at or very close to $1,000 per

month. Requiring landlords to maintain a waiting list to allow tenants to be placed in a lower cost unit is a useful rule change."

Commenter 17 suggested that the requirement to maintain waiting lists should be stricken in its entirety because it is not a federal requirement for HTC, Exchange, or Bond; it causes work for staff and hinders immediate housing of low-income people.

STAFF RESPONSE: Commenter 9 was not requesting any changes from the proposed rule, merely expressing support. Staff agrees with commenter, no changes made based on this comment.

Staff disagrees that there are no requirements to maintain waitlists. For example, 24 CFR §8.27 requires that an Owner maintain a waitlist of households that need the accessible features of a Unit. Many LURAs require Developments to maintain waitlists for special needs households. Furthermore, several HTC, Exchange, or Bond Developments are layered with federal programs such as HOME or Section 811 PRA that do require maintaining of a waitlist. The commenter has the ability to amend their waitlist policy in a manner that reduces staff workload within the rules and regulations that apply to a specific Development

Rule Section §10.622. Special Rules regarding rents and rent limit violations

COMMENT SUMMARY: Commenter 4 proposed additional circumstances when it should be permissible to change rent during a lease term.

Commenter 9 and 34 supported the prohibition on rent increases during a period, which is the lesser of 12 months or the lease term.

Commenter 10 and 17 opposed the changes to this section. Commenter 17 suggested that if the utility allowance decreases or the rent limit increased, owners should be allowed to increase rents up to $50 at the time of the change and then to the rent limit at lease renewal.

Commenter 18 noted several times that a federal program would require changes in the household's rent during a lease term.

Commenter 22 supports proposed language that now allows rent increases for any lease term, including month to month leases or other lease terms.

STAFF RESPONSE: Staff agrees with Commenter 4 and 18, and proposes changes which will address the opposition noted by Commenter 10.

Commenter 9 and 34 were not requesting any changes from the proposed rule, merely expressing support.

Staff has identified that the proposed rule may have a fiscal impact and is adopting the rule with changes to address the potential impact:

(j) "Owners are not permitted to increase the tenant portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes."

§10.623- Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

COMMENT- Commenter 22 stated: "§10.623(b)(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis; We request that the Department reconsider its position on prohibiting owners from charging fees for amenities that were included in eligible basis when the compliance period expires. Upon conclusion on the compliance period, the low-income housing tax credits have been claimed and event of noncompliance are no longer reportable to the IRS on Form 8823. Being able to charge fees for these amenities"

STAFF RESPONSE- After the compliance period, certain rules are relaxed in an effort to ease the administrative burden of residents and management staff. None of the relaxed rules are intended to affect the affordability of the property. Staff does not recommend allowing owners to charge for amenities after the close of the compliance period. Staff also notes that many developments have excess basis. This issue is best addressed by identifying and excluding the cost of amenities from the Development's qualified basis at the time of cost certification in order to avoid this issue.

§10.624- Compliance requirements for Developments with 811 Units

COMMENT- Commenter 22 stated "10.624(b) - There is a requirement to notify of potential 811 unit vacancies immediately. This was previously 30 days. Immediately is not reasonable and there should be some defined time frame for notification. If 30 days is too long, then I would suggest 10 or 15 days."

STAFF RESPONSE- Staff agrees that immediately is not reasonable and updated the language as follows to align with 10 TAC §8.7(l)(4) which provides a seven calendar day timeframe for notification:

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant. Failure to notify the Department will be cited as noncompliance and will be referred to the Enforcement Committee to be considered for possible administrative penalties and may be proposed for debarment, in accordance with the Enforcement Rule under 10 TAC Chapter 2.

General Comment:

COMMENT SUMMARY: Commenter 16 stated that all rules under Subchapter F should be up for comment; not just the rules TDHCA would like to change.

STAFF RESPONSE: Staff is holding quarterly roundtables to solicit input on emerging issues and will take rule action based on feedback and input from stakeholders. The commenter did not identify any rule changes she felt was necessary in any of the sections that were not out for comment. No changes were made based on this comment.

The Board adopted the final order adopting the amended rule on April 23, 2020.

STATUTORY AUTHORITY. The amended sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended sections affect no other code, article, or statute.

§10.611. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income de-

scribed in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP, or TCAP RF assisted unit, Owners must examine at least two months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation).

(c) A household's income designation at the time of move in cannot be changed unless:

(1) The household goes over income and they are replaced with another low income household;

(2) The Development has a written policy and procedure for changing household designations as household income changes;

(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;

(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income;

(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed; or

(6) The household's designation is being lowered.

§10.612. Tenant File Requirements.

(a) At the time of program designation as a low income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the Development also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). Beginning January 1, 2021, the application must provide a space for applicants to indicate if they are a veteran. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Marines, Coast Guard, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at https://veterans.portal.texas.gov/;

(3) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(4) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and throughout the Affordability Period for all Bond developments and HOME, and TCAP RF Developments, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME and TCAP RF Developments, an individual does not qualify as a low income or very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond Developments with less than 100% of the units set aside for households with an income less than 50% or 60% of area median income.

(C) THTF Developments with Market Rate units. However, THTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, and NHTF Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, TCAP RF, and NHTF Developments:

(1) HOME, TCAP RF, and NHTF Developments must complete a recertification with verifications of each assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP RF and NHTF Development affordability period is the effective date in the HOME, TCAP RF, and NHTF LURA. For example, a HOME Development with a LURA effective date of May 2011, will have the years of the affordability determined in Example 612(1):

(A) Year 1: May 15, 2011 - May 14, 2012;

(B) Year 2: May 15, 2012 - May 14, 2013;

(C) Year 3: May 15, 2013 - May 14, 2014;

(D) Year 4: May 15, 2014 - May 14, 2015;

(E) Year 5: May 15, 2015 - May 14, 2016;

(F) Year 6: May 15, 2016 - May 14, 2017;

(G) Year 7: May 15, 2017 - May 14, 2018;

(H) Year 8: May 15, 2018 - May 14, 2019;

(I) Year 9: May 15, 2019 - May 14, 2020;

(J) Year 10: May 15, 2020 - May 14, 2021;

(K) Year 11: May 15, 2021 - May 14, 2022; and

(L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, and NHTF Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, and NHTF funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for Section 811 PRA Units. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms:

(1) Section 811 Project Rental Assistance Application;

(2) Verification of disability, HUD 90102;

(3) House Rules;

(4) Move in move out inspection form HUD 90106, or TDHCA Section 811 Waiver of Move-in;

(5) Tenant acknowledgement of the Fact Sheet "How your rent is determined";

(6) Tenant acknowledgement of Resident Rights and Responsibilities;

(7) Tenant acknowledgement of EIV and You Brochure;

(8) Verification of Age;

(9) Verification of Social Security number;

(10) Screening for drug abuse and other criminal activity;

(11) 811 Tenant Selection Plan;

(12) Supplement to Application for Federally Assisted Housing: Form 92006;

(13) Annual Recertification Initial Notice;

(14) Annual Recertification First Reminder Notice;

(15) Annual Recertification Second Reminder Notice;

(16) Annual Recertification Third Reminder Notice;

(17) Race and Ethnic Data Reporting form: HUD 27061-H;

(18) HUD 9887 and HUD 9887-A;

(19) Annual Unit inspection;

(20) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and

(21) HUD Model lease 92336-PRA.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees or application deposits not promptly converted into a security deposit under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background

checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC Developments after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME and TCAP RF Developments:

(1) 100% HOME/TCAP-RF assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF Developments with any Market Rate units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(i) Owners of HOME, NSP, TCAP-RF, and NHTF must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division. Failure to do so will result in an Event of Noncompliance.

(j) Owners are not permitted to increase the tenant portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes.

§10.624. Compliance Requirements for Developments with 811 PRA Units.

(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided within seven calendar days of when the Development is notified that the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant. Failure to notify the Department will be cited as noncompliance and will be referred to the Enforcement Committee to be considered for possible administrative penalties and may be proposed for debarment, in accordance with the Enforcement Rule under 10 TAC Chapter 2.

(c) Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:

(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.

(2) The household's income is less than the extremely low income limit at move in.

(3) The Owner must check the following criminal history related to drug use of the household. Households in the 811 PRA program must not include:

(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(C) Any member who is subject to a State sex offender lifetime registration requirement.

(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3

par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(d) Noncompliance will be cited if the Development:

(1) Leased a Unit to a household that is not qualified for the 811 PRA program in accordance with the requirements of subsection (c)(1) - (4) of this section;

(2) Fails to Use the Enterprise Income Verification system for documenting the household's income;

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in §10.612(d) of this subchapter or the following forms when applicable:

(A) EIV summary report;

(B) EIV income report;

(C) EIV income discrepancy report;

(D) EIV No income reported;

(E) EIV no income report by health and human services or social security administration;

(F) EIV new hires report;

(G) Existing tenant search;

(H) Multiple Subsidy report;

(I) Failed EIV pre-screening report;

(J) Failed verification report;

(K) Deceased tenants report;

(L) Owner approval letter authorizing access to EIV for the EIV coordinators;

(M) EIV Coordinator Access Authorization form (CAAF);

(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and

(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);

(5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;

(6) Violates §1.15 of this title (relating to Integrated Housing);

(7) Fails to properly calculate the tenant portion of rent;

(8) Fails to properly calculate the tenant security deposit;

(9) Fails to use the HUD model lease;

(10) Egregiously fails to disperse 811 PRA Units throughout the Development;

(11) Fails to conduct required interim certifications;

(12) Fails to conduct annual income recertification; or

(13) Fails to prominently display, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and in other languages as required by Limited English Proficiency Requirements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2020.

TRD-202001672
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 17, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 475-1762

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SUBCHAPTER G. AFFIRMATIVE MARKETING REQUIREMENTS AND WRITTEN POLICIES AND PROCEDURE

10 TAC §§10.800 - 10.803

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Subchapter G, §§10.800 - 10.803, relating to Affirmative Marketing Requirements and Written Policies and Procedures. Sections 10.801 - 10.803 are adopted with changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8165). The rules will be republished. Section 10.800 is adopted without changes and will not be republished. The purpose of the new sections, in accordance with Tex. Gov't Code §2306.053, is to update the rules to move requirements on the Department's multifamily portfolio relating to Affirmative Marketing and Written Policies and Procedures out of Subchapter F, detailing Compliance Monitoring requirements, and into a new subchapter to consolidate Fair Housing related requirements on the Department's multifamily portfolio into one separate location within the Uniform Multifamily Rules.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it was determined that no changes to the rule generate costs to the properties in the Department's multifamily portfolio, and therefore no costs warrant being offset.

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.

Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program. This rule provides for an assurance that Fair Housing requirements relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities are clearly relayed to participating properties in the Department's portfolio.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is moving a rule from one existing Subchapter to a new Subchapter and making minor revisions. The existing Subchapter is being amended to delete sections relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities and those sections are being adopted as a new rulemaking simultaneously to provide for revisions.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.053.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. To the extent that multifamily properties in the Department's portfolio are considered small or micro-businesses, the economic impact of the rule on them is projected to be $0 as the revisions being adopted are minor and add no costs to the property's operations. There are no rural communities subject to the proposed rule as these properties are not owned directly by municipalities; therefore, the economic impact of the rule on rural communities is projected to be $0.

3. The Department has determined that because the rules apply to existing multifamily developments, there will be no 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 rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule has no economic effect on local employment because the rules relate only to a process which has already been in effect for existing multifamily properties in the Department's portfolio; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this new rule only administratively consolidates an existing set of rules relating to Fair Housing requirements into one separate Subchapter of the Uniform Multifamily Rules, while making minimal revisions, there are no "probable" effects of the new rule on particular geographic regions.

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 sections are in effect, the public benefit anticipated as a result of the new sections will be a consolidation of Fair Housing related requirements into one separate Subchapter of the Uniform Multifamily Rules. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at Subchapter F of this Chapter, relating to Uniform Multifamily Rules.

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 sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule has already been in effect elsewhere in rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between December 27, 2019, and January 27, 2020. Comments regarding the proposed new rule were accepted in writing and by e-mail with comments received from: (1) Lauren Loney of Texas Housers, (2) Juanita Jeanie Sanchez of Sanchez Compliance, (3) Jen Brewerton of the Texas Affiliation of Affordable Housing Providers, on behalf of a 42 member TAAHP Compliance and Post Award Rules Committee, and (4) Dena Moreland of Accolade Property Management.

General Comments

COMMENT SUMMARY: Commenter 3 generally supports and appreciates the Department's decision to shift oversight of the affirmative marketing requirements on the Department's multifamily portfolio and the written policies and procedures from Compliance to the Fair Housing section.

STAFF RESPONSE: Staff appreciates this comment. No changes have been made as a result of this comment.

COMMENT SUMMARY: Commenter 4 requests that all rules under Subchapter G be opened up for comment, not just the rules that the Department would like to change.

STAFF RESPONSE: As this is a wholly new subchapter in the Departments rules, the entire proposed new Subchapter G was released for public comment. No changes have been made as a result of this comment.

§10.801 Affirmative Marketing Requirements

§10.801(b)-(c) and (d)(2)

COMMENT SUMMARY:

Commenter 3 provides information on the history of how the Department has required the identification of "Least Likely to Apply" populations in previous versions of this rule requirement and requests that the Department reinstate the online Affirmative Marketing Web Tool. Commenter 1 recommends that the Department require affirmative marketing efforts by TDHCA region, and not limit efforts to a property's market area. Commenter 1 also recommends that advertising requirements include information about property and neighborhood characteristics such as school performance; proximity of grocery stores, community centers, public transportation, and other shopping centers; and, contact information for churches and neighborhood organizations in the neighborhood.

STAFF RESPONSE:

Staff appreciates these comments and recognizes the efforts Owners take to identify and market to "Least Likely to Apply"

populations. As identified on HUD Form 935.2A, a housing market area is the area from which a multifamily housing project owner/agent may reasonably expect to draw a substantial number of its tenants. This could be a county or Metropolitan Division. An expanded housing market area is a larger geographic area, such as a Metropolitan Division or a Metropolitan Statistical Area (MSA), which may provide additional demographic diversity in terms of race, color, national origin, religion, sex, familial status, or disability.

Staff is currently exploring options to re-release a simplified multifamily affirmative marketing tool that provides data in expanded housing market areas such as MSAs. Until a new tool is available, Owners shall continue to develop Affirmative Marketing Plans as required by this rule.

No changes have been made as a result of these comments.

§10.801(d)(1)(C)

COMMENT SUMMARY:

Commenter 3 requests clarification on requirements to provide property contact information in English, Spanish, and any other languages that may be required in accordance with Limited English Proficiency Requirements. Specifically:

"Clarification1: How would contact information differ from English to Spanish, or any languages?

Clarification 2: If the Hispanic or Latino population is not identified as least likely to apply, what is the value in including contact information in Spanish? For example, if the Asian population is identified as LLA (least likely to apply), what value does having contact information in Spanish add?

Clarification 3: What is expected to evidence compliance with Limited English Proficiency Requirements? LEP is a 4 Factor Analysis that result in a Language Assistance Plan and is only required for programs receiving federal funds. The 4 Factor Analysis is a different process than the identification of LLA populations. In other words, the 4 Factor Analysis could result in the identification of LEP populations that are not least likely to apply and vice versa."

STAFF RESPONSE:

Property contact information may differ in English, Spanish, or other identified languages, if the property contact information includes helpful information such as an indication of what the contact information is for ("Información de contacto de la propiedad" in Spanish) or if different numbers are provided, for example, if there is a local versus toll free number.

Even if the Hispanic or Latino population is not identified as least likely to apply, all populations must still be provided meaningful access to properties in the TDHCA portfolio, regardless of national origin or level of English proficiency. Populations not identified as least like to apply may also have Limited English Proficiency. The commenter stated that limited English Proficiency requirements were only required for Developments that received federal funds. HUD has issued guidance that this is also a requirement under the Fair Housing Act, https://www.hud.gov/sites/documents/LEPMEMO091516.PDF. The Department has determined through its Limited English Proficiency analysis that Spanish is a language for every county where potential low-income tenants may have limited English proficiency.

As adopted, Owners must still adhere to both requirements of Affirmatively Marketing to Least Likely to Apply populations and requirements to take reasonable steps to ensure meaningful access to properties in the TDHCA portfolio for individuals who as a result of national origin are limited in their English proficiency.

No changes have been made as a result of these comments.

§10.801(e)(1)

COMMENT SUMMARY:

Commenter 1 cites affirmative marketing related research and best practices for longer affirmative marketing practices; opposes proposed changes to this rule, reducing the required affirmative marketing timeline to 90-days prior to the anticipated date the first building is to be available for occupancy; and, requests that the Department revert to the 6-month timeline requirements.

STAFF RESPONSE:

Staff had proposed reducing the 6-month timeframe to 90 days as 90 days is the minimum requirement for HUD funded developments. The Department recognizes research cited that suggests that a 90-day marketing period is too short and may exclude those who need more advanced notice to plan to move, get out of current leases, enroll their kids into a new school, or even simply have the opportunity to sign up on a waiting list. Changes have been made as a result of this comment, reverting the affirmative marketing timeline back to 6 months.

§10.801(g)

COMMENT SUMMARY:

Commenter 1 recommends removal of the exception to the Affirmative Marketing requirements in this rule, which exempts Development Owners from conducting Affirmative Marketing if the waiting list for their property is closed.

STAFF RESPONSE:

As the rule is currently written, Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under subsection §10.801(e)(1). As indicated in the staff response to comments relating to §10.801(e)(1), staff recommends reverting the affirmative marketing timeline back to 6-months prior to the anticipated date the first building is to be available for occupancy. Staff recommends maintaining the exception to the Affirmative Marketing requirements when a waitlist is closed so that potential applicants are not discouraged to find a closed waitlist at a property. No changes have been made as a result of these comments.

§10.802 Written Policies and Procedures

§10.802(a)(2)

COMMENT SUMMARY:

Commenter 2 requests clarification of required locations for posting written policies and procedures and the following two forms: the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." Commenter 2 also requests clarification on the monitoring of this requirement.

STAFF RESPONSE:

All written policies and procedures and the two aforementioned forms must be available in the leasing office and anywhere else where applications are taken. Additionally, Developments that accept electronic applications must maintain on their website these written policies and procedures and the same noted forms. Evaluation of this requirement will be done in accordance with provisions detailed §10.803 Compliance and Events of Noncompliance. No changes have been made as a result of these comments.

§10.802(a)(3)

COMMENT SUMMARY:

Commenter 1 provides support and Commenters 2, 3, and 4 request clarification on the added requirement to inform all tenants in writing of the availability of new written policies and procedures. Commenter 3 indicates that informing tenants in writing would be administratively burdensome and requests removing the written notification requirement all together or limiting written notification to posting in a common area for one month to satisfy the requirement. Commenter 4 requests that Owners only need to convey changes to Waitlist policies to tenants, as Commenter 4 asserts that no other policies would affect current residents.

STAFF RESPONSE:

Several policies may exist outside of a Waitlist policy that would affect tenants, including but not limited to policies addressing occupancy standards, reasonable accommodations, transfers, changes in household designation, etc. Changes to any of these policies may affect current tenants. Therefore, the Department maintains the requirement that tenants must be notified of the availability of new written policies and procedures. Evaluation of this requirement will be done in accordance with provisions detailed in 10 TAC §10.803 Compliance and Events of Noncompliance.

Acceptable forms of notification in writing include but are not limited to an email to all residents, a note on all occupied unit doors, a posting in a mailroom or other central location, etc. Staff appreciates the suggestion to accept written notification to posting in a common area for one month as a method to satisfy the requirement and has added clarifying language to the final rule.

Changes have been made to this rule as a result of this comment to clarify acceptable forms of notification.

§10.802(b)(1)

COMMENT SUMMARY:

Commenter 3 requests confirmation that only the items outlined in this section are required, and that owners are not required to add additional items outside of the rule.

STAFF RESPONSE:

Staff has clarified what items in this section are required in a Development's Tenant Selection Criteria. Specifically, rent and income limits are not required to be included in the Tenant Selection Criteria, although the Development must identify what unit designations are available. Changes have been made as a result of this comment to clarify what information must be included in a Development's Tenant Selection Criteria.

§10.802(b)(4)(c)

COMMENT SUMMARY:

Commenter 1 supports changes to this rule that prevent possible lease violations should children join the household after the start of a lease term.

STAFF RESPONSE:

Staff appreciates this comment. No changes have been made as a result of this comment.

§10.802(g)(2)(A)

COMMENT SUMMARY:

Commenter 2 requests clarification on providing the following two forms along with their 3-day notices to pay and 30-day quit notices: the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

STAFF RESPONSE:

Changes to this rule only clarify what is meant by "under applicable program rules" in the previous version, as it appeared in the Compliance rules. The requirement to provide the two noted Violence Against Women Act (VAWA) forms along with Non-renewal and/or Termination Notices has not changed from the Compliance rules to the new Subchapter G rules, as provided in §10.801(g)(2)(B). No changes have been made as a result of these comments.

§10.802(h)

COMMENT SUMMARY:

Commenter 3 provides history of the Departments rulemaking actions and requirements for providing VAWA forms to applicants and residents. Commenter 3 also requests that this rule be stricken, as the commenter indicates that applicants are provided ample notification of VAWA protections through other required notifications; further, additional lengthy forms at the time of application may discourage applicants from participating in Multifamily programs.

STAFF RESPONSE:

Staff maintains the belief that individuals affected by domestic violence may be discouraged from applying if they are unaware of their rights. Providing these VAWA forms at application ensures applicants are aware of their rights. No changes have been made as a result of this comment.

§10.802(i)

COMMENT SUMMARY:

Commenter 4 requests that the Department provide only technical assistance, and not findings of non-compliance, when policies are reviewed before becoming effective.

STAFF RESPONSE:

As indicated by §10.802(i), "Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us." During the review process, Fair Housing staff intends to provide technical assistance for affirmative marketing and written policies and procedures whenever possible. However, if an owner or affiliated party fails to cooperate with the review, is not responsive

to the input provided during the technical assistance process, or triggers provisions detailed in §10.803, findings may result. No changes have been made as a result of this comment.

The Board adopted the final order adopting the new rules on April 23, 2020.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

§10.801. Affirmative Marketing Requirements.

(a) Applicability. Compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. A Development Owner with five or more total Units must affirmatively market the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." To determine the "least likely to apply" populations, a Development Owner is encouraged to use Worksheet 1 of HUD Form 935.2A, but at a minimum the Owner must document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to Persons with Disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. An Owner participating in a HUD funded program administered by the Department must use the version utilized by the program.

(d) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo;

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process; and

(C) Property contact information must be provided in both English and Spanish, and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least six months prior to the anticipated date the first building is to be available for occupancy.

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(f) Recordkeeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its waitlist, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waitlist, or is marketing prior to placement in service as required under subsection (e)(1) of this section.

§10.802. Written Policies and Procedures.

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an Owner fails to have such written policies and procedures, or fails to follow their written policies and procedures it will be handled as an Event of Noncompliance as further provided in §10.803 of this subchapter (relating to Compliance and Events of Noncompliance).

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; Developments that accept electronic applications must maintain on their website these written policies and procedures and the same noted forms.

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing. Acceptable forms of notification in writing are: an email or letter to all tenants, a note on all occupied Unit doors, or posting for at least 30 calendar days in a mailroom or other central common area, accessible to tenants. Other acceptable forms of notification may be approved by the Department, upon request in advance of the policy's effective date.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the Development or applicants on the waitlist at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market rate development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the

program, or for as long as tenants who were screened under the historical criteria are occupying the Development.

(1) The criteria identified by a Development must be reasonably related to an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the Development, including any preferences, restrictions (such as the Occupancy Standard Policy), the Waitlist Policy, Changes in Housing Designation Policy, low income unit designations utilized, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) of this chapter (relating to Tenant File Requirements) must be stated in the policies;

(B) Applicant screening criteria, including what applicant attributes are screened and what scores or findings would result in ineligibility;

(C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and TDHCA's rules;

(D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, unless it is in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has MFDL funding, except for the preference allowed by paragraph (3) of this subsection), is required by a program in which the Owner is participating which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Section 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. An Efficiency Unit that is greater than 600 square feet, must also have an Occupancy Standard Policy of at least three persons per Unit. In an SRO or in an Efficiency that is less than 600 square feet, the Occupancy Standard Policy must allow at least two persons per Unit. Supportive housing or transitional housing Developments where all Units in the Development are SROs or Efficiencies, are not required by the Department to have an Occupancy Standard Policy, except as required for the 811 PRA Program or as reflected in the Development's LURA.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation;

(B) How transfers related to a reasonable accommodation will be addressed; and

(C) A timeframe in which the Owner will respond to a request that is compliant with §1.204(b)(3) and (d) of this title (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist Policy. Owners must maintain a written waitlist policy, regardless of current Unit availability. The policy must be maintained at the Development. The policy must include procedures the Development uses in:

(1) Opening, closing, and selecting applicants from the waitlist, including but not limited to the requirements in §10.615(b) of this title (relating to Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments);

(2) Determining how lawful preferences are applied; and

(3) Procedures for prioritizing applicants needing accessible Units in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title (relating to Accessibility and Reasonable Accommodations).

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with §10.611(c) of this subchapter (relating to Determination, Documentation and Certification of Annual Income).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when denying an application and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and Units at Developments that lease Units under the Department's Section 811 PRA program. The appeals process must provide a 14-day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied.

(4) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, TCAP RF, NHTF, NSP, HTC, TCAP and Exchange Developments, see 10 TAC §10.613(a) - (b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a) - (f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the Development (this is required under some LURAs, for HOME Developments that are owned by Community Housing Development Organizations, and for 811 PRA units).

(h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, as a result of complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to fair.housing@tdhca.state.tx.us. After review by the Department, an Owner may make non-substantive changes to the policies.

(j) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

§10.803. Compliance and Events of Noncompliance.

(a) The Department will provide written notice to the Owner if the Department discovers through monitoring, review, resident complaint, or any other manner that the Development is not in compliance with the provisions of this subchapter. A 90 day Corrective Action Period will be provided. Documentation of correction must be received during the Corrective Action Period for an Event of Noncompliance to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: fair.housing@tdhca.state.tx.us.

(b) If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each issue, but does not fully address all issues, the Department will give the Owner written

notice and an additional 10 calendar day period to submit evidence of full corrective action.

(c) If communications to the Owner under this subchapter have a pattern of being returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) for notifications under this subchapter. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Events of Noncompliance identified in the evaluation of the requirements of this subchapter will be those specified in §10.625 of this title (relating to Events of Noncompliance).

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 27, 2020.

TRD-202001673
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: December 27, 2019
For further information, please call: (512) 475-4595

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CHAPTER 23. SINGLE FAMILY HOME PROGRAM

SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

10 TAC §23.61

The Texas Department of Housing and Community Affairs (the Department) adopts an amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements, without changes to the proposed text as published in the December 27, 2019, issue of the *Texas Register* (44 TexReg 8170). The rule will not be republished. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be offset.

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.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the amendment would be in effect, the amendment does not create or eliminate a government program, but relates to correcting a citation in the rule.

2. The amendment does not require a change in work that would require the creation of new employee positions, nor is the amendment significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The amendment does not require additional future legislative appropriations.

4. The amendment does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The amendment is not creating a new regulation.

6. The amendment will not repeal an existing regulation.

7. The amendment will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The amendment will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this amendment and determined that the amendment 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 amendment does not contemplate nor 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 amendment as to its possible effects on local economies and has determined that for the first five years the amendment 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 amendment is in effect, the public benefit anticipated as a result of the amended section would be clarity in requirements. There will not be economic costs to individuals required to comply with the amended 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 amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment

between December 20, 2019, and January 20, 2020. No comments were received regarding the proposed rule, and the rule is being adopted without changes.

The Board adopted the final order authorizing the adoption of the amendments on April 23, 2020.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

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 27, 2020.

TRD-202001668
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 17, 2020
Proposal publication date: December 27, 2019
For further information, please call: (512) 475-1762

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1011

The Texas Education Agency (TEA) adopts new §61.1011, concerning formula transition grant. The new section is adopted with changes to the proposed text as published in the February 7, 2020 issue of the *Texas Register* (45 TexReg 850) and will be republished. The adopted new rule implements changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate additional funding available to certain school districts.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, enacted Texas Education Code (TEC), §48.277, Formula Transition Grant, which created an additional entitlement through the Foundation School Program (FSP) for school districts that did not exceed certain thresholds related to funding under the law as it existed on January 1, 2019. TEC, §48.277, directs the commissioner to use calculations that ensure that eligible districts receive the lesser of 103% of the district's total maintenance and operations revenue per student in average daily attendance under prior law, or 128% of the statewide average amount of maintenance and operations revenue per student in average daily attendance under prior law.

Adopted new 19 TAC §61.1011 implements HB 3, 86th Texas Legislature, 2019, by establishing definitions and providing detail regarding the data sources that TEA will use to calculate the funding available to a school district under the law as it existed on January 1, 2019.

In response to public comment, subsection (c)(14) was modified at adoption to correct the school years for which TEA will stop running prior law calculations.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 7, 2020, and ended March 9, 2020. Following is a summary of comments received and corresponding agency responses.

Comment: The Texas School Coalition and Texas Association of School Business Officials (TASBO) commented that the rule as proposed contemplated running old law calculations for the 2020-2021 and 2021-2022 school years instead of the 2019-2020 and 2020-2021 school years as required in the enabling legislation.

Agency Response: The agency agrees and has modified the rule at adoption accordingly.

Comment: TASBO and the Texas School Coalition also commented that by finalizing the old law calculations as of June 30 following the school year the TEA would not be providing sufficient time for incorporating property value audits, which could be filed more than a year after this date into the old-law calculations.

Agency Response: TEA disagrees and has maintained language as proposed. The formula transition grant was intended to provide temporary support to districts negatively affected by entitlement changes caused by HB 3. It is the agency's position that it is reasonable to freeze old-law calculations once final tax collections have been incorporated in order to provide budget stability to both local education agencies and the state moving forward. Property value audits submitted to TEA after the end of the school year do not accurately reflect the revenue a district actually received under old law during the school year.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.277, as added by HB 3, 86th Texas Legislature, 2019, which details the calculation of the formula transition grant for school districts and open-enrollment charter schools. This grant is provided to eligible school districts and open-enrollment charter schools on the basis of a comparison of funding under HB 3 and funding under prior law.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, and §48.277, as added by HB 3, 86th Texas Legislature, 2019.

§61.1011. Formula Transition Grant.

(a) General provisions. This section implements Texas Education Code (TEC), §48.277 (Formula Transition Grant), which provides for additional funding for school districts with new funding levels that did not exceed certain thresholds as a result of the passage of House Bill (HB) 3, 86th Texas Legislature, 2019. In accordance with TEC, §48.277, this section defines the data sources that Texas Education Agency (TEA) will use in calculating the prior law funding available to school districts.

(b) Definitions. The following terms have the following meanings when used in this section.

(1) Average daily attendance (ADA)--Average daily attendance as defined by TEC, §48.005(a).

(2) Foundation School Program (FSP)--The program established under TEC, Chapters 46, 48, and 49, or any successor program of state-appropriated funding for school districts in this state.

(3) Local maintenance and operations (M&O) tax collections--The amount of local M&O taxes collected by a school district.

(4) Maintenance and operations revenue--The total M&O revenue available to a school district for maintenance and operations under the FSP, including state aid and M&O tax collections net of any required recapture payments.

(5) Public Education Information Management System (PEIMS)--The system that encompasses all data requested and received by TEA about public education, also known as the Texas Student Data System (TSDS) or TSDS PEIMS.

(c) Data sources for calculating M&O revenue under TEC, Chapters 41 and 42, as those chapters existed on January 1, 2019.

(1) M&O tax rate. TEA will use a district's tax year 2018 adopted M&O tax rate, minus any pennies of tax effort adopted in response to a disaster under Texas Tax Code, §26.08(a-1).

(2) M&O tax collections. For the 2019-2020 and 2020-2021 school years, the M&O tax collections under prior law are equal to the product of:

(A) the quotient of:

(i) the actual M&O tax collections for the school year submitted to TEA for FSP purposes; and

(ii) the actual adopted M&O tax rate for the school year; and

(B) the adopted M&O tax rate for the 2018 tax year.

(3) Total tax levy. For purposes of calculating a district's support of students enrolled in the Texas School for the Blind and Visually Impaired and Texas School for the Deaf under TEC, §30.003, TEA will calculate the total tax levy by adding the district's interest and sinking (I&S) tax collections to the M&O tax collections calculated in paragraph (2) of this subsection.

(4) Average daily attendance. In calculating the ADA of a school district under former TEC, §42.005, TEA will exclude any attendance submitted to TEA under TEC, §48.0051 (Incentive for Additional Instructional Days).

(5) State compensatory education full-time equivalent (FTE) student counts. To calculate the number of students eligible for the compensatory education allotment under former TEC, §42.152, TEA will continue to average the best six months number of students eligible for enrollment in the National School Lunch Program from the preceding federal fiscal year submitted to TEA from the Texas Department of Agriculture. Districts that used alternative reporting of these students through the FSP will be able to continue to submit alternative reporting data through the FSP system for purposes of calculating prior law revenue under the formula transition grant.

(6) Career and technical education (CTE) FTE student counts. To calculate the number of student FTEs eligible for the career and technology education allotment under former TEC, §42.153, TEA will use CTE FTEs submitted to TEA in the summer PEIMS submission for each year and exclude any CTE FTEs in Grade 7 or 8 that were authorized for FSP funding starting with the 2019-2020 school year under TEC, §48.106 (Career and Technology Education Allotment). TEA will also exclude any new CTE funding related to Pathways in Technology Early College High School (P-TECH) schools and the New Tech Network.

(7) Bilingual education. To calculate the bilingual education allotment under former TEC, §42.153, TEA will use data submitted to PEIMS for students with limited English proficiency in bilingual or special language programs under TEC, Chapter 29, Subchapter B (Bilingual Education and Special Language Programs).

(8) High school allotment. To calculate the high school allotment under former TEC, §42.260, TEA will continue to use PEIMS ADA for students in Grades 9-12.

(9) Staff salary allotment. To calculate the additional state aid for staff salary increases under former TEC, §42.2513, TEA will use the numbers of full-time and part-time employees other than administrators or employees subject to the minimum salary schedule submitted to TEA through the FSP system for the 2018-2019 school year.

(10) Additional state aid for homestead exemption. To calculate the additional state aid for homestead exemption under former TEC, §42.2518, TEA will use the values calculated for districts for the 2018-2019 school year.

(11) Guaranteed yield. To calculate the guaranteed yield allotment under former TEC, §42.302(a-1)(1), TEA will use the amounts per student in weighted average daily attendance (WADA) per penny of tax effort established in the General Appropriations Act, Rider 3, Article III, 86th Texas Legislature, 2019, of $126.88 for the 2019-2020 school year and $135.92 for the 2020-2021 school year.

(12) Chapter 41 status. For purposes of determining a district's status under former TEC, Chapter 41, TEA will calculate districts' recapture costs under the law as it existed on January 1, 2019, by assuming all districts with a final wealth per WADA in excess of the equalized wealth level(s) were notified of the requirement to pay recapture and that all districts would have exercised the option to purchase ADA credits under former TEC, Chapter 41, Subchapter D. TEA will further assume that all affected districts would have qualified for the early agreement credit as it existed under former TEC, §41.098.

(13) School district entitlement for certain students. TEA will exclude calculations of state aid under former TEC, §42.2511, and TEC, §48.252 (School District Entitlement for Certain Students) in calculations for the formula transition grant.

(14) Limitation on old law calculations.

(A) TEA will stop running prior law calculations for the 2019-2020 school year after June 30, 2021, and the amounts that a district would have received for the 2019-2020 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

(B) TEA will stop running prior law calculations for the 2020-2021 school year after June 30, 2022, and the amounts that a district would have received for the 2020-2021 school year under TEC, §48.277(a) and (d-1), will not be changed after that date.

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 27, 2020.

TRD-202001663
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 17, 2020
Proposal publication date: February 7, 2020
For further information, please call: (512) 475-1497

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 33. CONSOLIDATED PERMIT PROCESSING

SUBCHAPTER B. GENERAL PROVISIONS

30 TAC §33.25

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §33.25.

The amendment to §33.25 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6710). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §33.25 updates a cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§33.25, Correction of a Consolidated Permit

The commission adopts amended §33.25 to update the cross-reference from §50.45 to §50.145 (Corrections to Permits).

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §33.25 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §33.25 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §33.25 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking

under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 33.25 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapters J and M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The amendment implements TWC, Chapter 5, Subchapters J and M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: November 8, 2019
For further information, please call: (512) 239-6812

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CHAPTER 35. EMERGENCY AND TEMPORARY ORDERS AND PERMITS; TEMPORARY SUSPENSION OR AMENDMENT OF PERMIT CONDITIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §35.13 and §35.25.

The amendments to §35.13 and §35.25 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6713). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice re-

quirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendments to §35.13 and §33.25 update cross-references.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

§35.13, Eligibility of Executive Director

The commission adopts amended §35.13 to update the cross-reference from §50.41 to §50.141 (Eligibility of Executive Director).

§35.25, Notice and Opportunity for Hearing

The commission adopts amended §33.25(e)(1)(A) to update the cross-reference from §39.7 to §39.407 (Mailing Lists) and from §39.13 to §39.413 (Mailed Notice).

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §35.13 and §35.25 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §35.13 and §35.25 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

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

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 35.13 and §35.25 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER B. AUTHORITY OF EXECUTIVE DIRECTOR

30 TAC §35.13

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapters L and M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's au-

thority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The amendment implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER C. GENERAL PROVISIONS

30 TAC §35.25

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapters L and M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The amendment implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 *without changes* to the proposal as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6717).

Background and Summary of the Factual Basis for the Adopted Rules

The rules in Chapter 39, Subchapters A - E were initially adopted to be effective January 8, 1997, (December 27, 1996, issue of the *Texas Register* (21 TexReg 12550)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 39, Subchapters A - E, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking repeals obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and removes unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability

date. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The commission also concurrently adopts amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: Applicability and General Provisions

The commission adopts the repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, and 39.25. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Public Notice of Solid Waste Applications

The commission adopts the repeal of §§39.101, 39.103, 39.105 - 39.107, and 39.109. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter C: Public Notice of Water Quality Applications

The commission adopts the repeal of §39.151. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter D: Public Notice of Air Quality Applications

The commission adopts the repeal of §39.201. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter E: Public Notice of Other Specific Applications

The commission adopts the repeal of §39.251 and §39.253. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted repeal of §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.101, 39.103, 39.105 - 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253 is procedural in nature and will not burden private real property. The adopted rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the sections adopted for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections adopted for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits

Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER A. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

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 24, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: November 8, 2019
For further information, please call: (512) 239-6812

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SUBCHAPTER B. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §§39.101, 39.103, 39.105 - 39.107, 39.109

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, and 5.103; and THSC, §361.024.

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. PUBLIC NOTICE OF WATER QUALITY APPLICATIONS

30 TAC §39.151

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024.

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SUBCHAPTER D. PUBLIC NOTICE OF AIR QUALITY APPLICATIONS

30 TAC §39.201

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The repeal is also adopted under Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, and 5.103; and THSC, §382.017.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. PUBLIC NOTICE OF OTHER SPECIFIC APPLICATIONS

30 TAC §39.251, §39.253

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§39.402, 39.403, 39.501, 39.503, and 39.709; and new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011.

The amendments to §§39.402, 39.501, and 39.709; and new §§39.1001, 39.1005, 39.1007, 39.1009, and 39.1011 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6721) and, therefore, will not be republished. The amendments to §39.403 and §39.503 and new §39.1003 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 35, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350 to

make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. Adopted new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 carry forward only the portions of the rules that are currently applicable to the types of applications and do not add or remove any current notice requirements for these applications. The adopted new rules increase the ease of understanding the applicable notice requirements for these applications. In addition, the adopted amendments to §§39.402, 39.403, 39.501, 39.503, and 39.709 remove obsolete text and update cross-references.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical or reference corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§39.402, Applicability to Air Quality Permits and Permit Amendments

The commission adopts to remove §39.402(b) and re-letter the subsequent subsection.

§39.403, Applicability

The commission adopts amended §39.403(a) to remove obsolete text that references rules that are concurrently adopted for repeal. The commission adopts amended §39.403(a)(1) to add that adopted §39.403(e) lists the types of applications for which public notice is not required.

The commission adopts to remove §39.403(c)(4) - (8) and relocate the text to adopted new Chapter 39, Subchapter P. The commission also adopts to remove §39.403(c)(9) and relocate the text to adopted §39.403(e)(4). The remaining paragraphs are renumbered accordingly.

Because §39.551 is in Chapter 39, Subchapter J, the commission adopts amended §39.403(c)(4) to ensure there is no conflict in the introductory part of amended §39.403(c) and §39.403(c)(4).

Finally, the commission adopts §39.403(c)(7) to reference applications subject to adopted new Chapter 39, Subchapter P.

The commission adopts amended §39.403(d) to add a reference to §39.705 (Mailed Notice for Radioactive Material Licenses) to ensure the correct mailed notice information is included.

The commission adopts §39.403(e)(1) - (4) to relocate and update the text of §39.15(a) and §39.403(c)(9).

At adoption, the commission amends §39.403(c)(1) and (4) and (e)(2) to conform references to Texas Register style requirements.

§39.501, Application for Municipal Solid Waste Permit

The commission adopts to remove obsolete §39.501(e)(1) and obsolete text in §39.501(e)(2) regarding a public meeting for an application for a new municipal solid waste facility because no applications filed before September 1, 2005 remain pending with the commission. The commission adopts to re-designate §39.501(e)(2) and (e)(2)(B) as §39.501(e)(1) and (2) and update the cross-references in §39.501(e)(4) - (6), accordingly.

§39.503, Application for Industrial or Hazardous Waste Facility Permit

The commission adopts amended §39.503(b) and (c) to update the cross-references in each subsection from §50.45, which is concurrently adopted for repeal, to §50.145 (Corrections to Permits). In addition, the commission adopts to remove obsolete text in §39.503(e)(1), (2), and (4) regarding requirement for an applicant to hold a public meeting for an application for a new hazardous waste facility, for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, or for a new industrial or hazardous waste facility because no applications filed before September 1, 2005 remain pending with the commission.

At adoption, the commission amends §39.503 to conform references to Texas Register style requirements.

Subchapter M, Public Notice for Radioactive Material Licenses

§39.709, Notice of Contested Case Hearing on Application

The commission adopts to remove §39.709(d) because no new license applications filed on or before January 1, 2007 remain pending with the commission.

§39.1001, Purpose and Applicability

The commission adopts new §39.1001 to relocate language in §39.1 (Applicability) and §39.3 (Purpose), both concurrently adopted for repeal, and from §39.403 to adopted new Chapter 39, Subchapter P. Adopted new §39.1001 specifies the types of applications for which an opportunity for contested case hearings is otherwise not required by law and which are not subject to the requirements of Chapter 39, Subchapters G - M.

§39.1003, Notice of Application for Minor Amendments

The commission adopts new §39.1003 to relocate text from §39.403(c)(5), and from §39.11 (Text of Public Notice) and §39.17 (Notice of Minor Amendment), which are concurrently adopted for repeal. Adopted new §39.1003(a) provides that for applications for minor amendments of a permit under Chapter 305, Subchapter D (Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice to the persons listed in §39.413 (Mailed Notice); and for minor amendments of injection well permit applications the chief clerk shall mail notices to persons entitled to receive notice under §39.651(c)(4) (Application for Injection Well Permit). Adopted new §39.1003(b) specifies the text of the notice of a minor amendment and adopted new §39.1003(c) provides that the deadline to file public comment is ten days after mailing. Finally, adopted new §39.1003(d) provides that §39.1003(a) does not apply to applications seeking a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in

§39.551 (Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

At adoption, the commission corrects the title of Chapter 305, Subchapter D in the reference.

§39.1005, Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit

The commission adopts new §39.1005 to relocate text from §39.403(c)(6), and from §39.11 and §39.105 (Application for a Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit), which are concurrently adopted for repeal. Adopted new §39.1005(b) specifies the text for notice requirements in §305.69 (Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits. Adopted new §39.1005(c) specifies requirements for mailed notice for these applications.

§39.1007, Notice of Class 2 Modification of an Industrial Solid Waste or Hazardous Waste Permit

The commission adopts new §39.1007 to relocate text from §39.107 (Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit), which is concurrently adopted for repeal, and from §§39.403(c)(8), 39.411 (Text of Public Notice), and 305.69 (Solid Waste Permit Modification at the Request of the Permittee). Adopted new §39.1007 provides that notice requirements for applications for Class 2 modifications are in §305.69, except that the text of notice shall comply with §39.411(b) and §305.69. In addition, it provides that the notice shall specify the deadline to file public comment with the chief clerk and that when mailed notice is required, the applicant shall mail notice to the persons listed in §39.413.

§39.1009, Notice of Modification of a Municipal Solid Waste Permit or Registration

The commission adopts new §39.1009 to relocate text from §39.403(c)(7), and from §39.106(a) and (b) (Application for Modification of a Municipal Solid Waste Permit or Registration), which is concurrently adopted for repeal. Adopted §39.1009 specifies that the mailed notice requirements for applications are in §305.70 (Municipal Solid Waste Permit and Registration Modifications).

§39.1011, Notice of Application for Voluntary Transfer of Injection Well Permit

The commission adopts new §39.1011 to relocate text from §39.403(c)(4), and from §39.11 and §39.15 (Public Notice Not Required for Certain Types of Applications), which are concurrently adopted for repeal. Adopted new §39.1011 specifies the requirements for the content of and to whom notice of a voluntary transfer of an injection well permit must be provided, as well as, the deadline to file public comment on the application.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§39.402, 39.403, 39.501, 39.503, and 39.709; and new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§39.402, 39.403, 39.501, 39.503, and 39.709, and new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments to §§39.402, 39.403, 39.501, 39.503, and 39.709, and new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rules do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Adopted amended §§39.402, 39.403, 39.501, 39.503, and 39.709; and new §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, and 39.1011, are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.402, §39.403

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H - J, L, and M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits).

(1) Explanation of applicability. Subsection (b) of this section lists all the types of applications to which Subchapters H - J, L, and M of this chapter apply. Subsection (c) of this section lists certain types of applications that would be included in the applications listed in subsection (b) of this section, but that are specifically excluded. Subsection (d) of this section specifies that only certain sections apply to applications for radioactive materials licenses. Subsection (e) of this section lists the types of applications for which public notice is not required.

(2) Explanation of organization. Subchapter H of this chapter contains general provisions that may apply to all applications under Subchapters H - M of this chapter. Additionally, in Subchapters I - M of this chapter, there is a specific subchapter for each type of application. Those subchapters contain additional requirements for each type of application, as well as indicating which parts of Subchapter H of this chapter must be followed.

(3) Types of applications. Unless otherwise provided in Subchapters G - M of this chapter, public notice requirements apply to applications for new permits and applications to amend, modify, or renew permits.

(b) As specified in those subchapters, Subchapters H - J, L, and M of this chapter apply to notices for:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under Texas Health and Safety Code (THSC), Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code (TWC), Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Concentrated Animal Feeding Operations);

(3) applications for underground injection well permits under TWC, Chapter 27, or under THSC, Chapter 361;

(4) applications for production area authorizations or exempted aquifers under Chapter 331 of this title (relating to Underground Injection Control);

(5) contested case hearings for permit applications or contested enforcement case hearings under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), except as provided in subsection (d) of this section;

(7) applications for consolidated permit processing and consolidated permits processed under TWC, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing); and

(8) Water Quality Management Plan updates processed under TWC, Chapter 26, Subchapter B.

(c) Regardless of the applicability of subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Chapter 321, Subchapter B of this title;

(2) applications for registrations and notifications under Chapter 312 of this title;

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications for minor modifications of Texas Pollutant Discharge Elimination System permits under §305.62(c)(3) of this title (relating to Amendments), except as provided by §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge);

(5) applications for registration and notification of sludge disposal under §312.13 of this title (relating to Actions and Notice);

(6) applications for registration of pre-injection units for nonhazardous, noncommercial, underground injection wells under §331.17 of this title (relating to Pre-injection Units Registration); or

(7) applications listed in Subchapter P of this chapter (relating to Other Notice Requirements).

(d) Applications for radioactive materials licenses under Chapter 336 of this title are not subject to §39.405(c) and (e) of this title (relating to General Notice Provisions); §§39.418 - 39.420 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit; Notice of Application and Preliminary Decision; and Transmittal of the Executive Director's Response to Comments and Decision); and certain portions of §39.413 of this title (relating to Mailed Notice) that are not listed in §39.705 of this title (relating to Mailed Notice for Radioactive Material Licenses).

(e) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §50.145 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) applications for special collection route permits under §330.7(c)(2) of this title (relating to Permit Required); or

(4) applications for minor modifications of underground injection control permits under §305.72 of this title (relating to Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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SUBCHAPTER I. PUBLIC NOTICE OF SOLID WASTE APPLICATIONS

30 TAC §39.501, §39.503

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Applicability. This section applies to applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication requirements.

(1) If an applicant for an industrial or hazardous waste facility permit decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must also be mailed to the mayor of the municipality. Mailed notice must be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(2) The requirements of this paragraph are set forth in 40 Code of Federal Regulations (CFR) §124.31(b) - (d), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and apply to all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, where the renewal application is proposing a significant change in facility operations. For the purposes of this paragraph, a "significant change" is any change that would qualify as a Class 3 permit modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The requirements of this paragraph do not apply to an application for minor amendment under §305.62 of this title (relating to Amendments), correction under §50.145 of this title (relating to Corrections to Permits), or modification under §305.69 of this

title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit, where the renewal application is proposing a significant change in facility operations.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) Upon the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located and to the persons listed in §39.413 of this title (relating to Mailed Notice). For all hazardous waste part B applications for initial permits for hazardous waste management units, hazardous waste part B permit applications for major amendments, and hazardous waste part B applications for renewal of permits, the chief clerk shall provide notice to meet the requirements of this subsection and 40 CFR §124.32(b), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), and the executive director shall meet the requirements of 40 CFR §124.32(c), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417). The requirements of this paragraph relating to 40 CFR §124.32(b) and (c) do not apply to an application for minor amendment under §305.62 of this title, correction under §50.145 of this title, or modification under §305.69 of this title, or to an application that is submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, unless the application is also for an initial permit for hazardous waste management unit(s), or the application is also for renewal of the permit.

(2) After the executive director determines that the application is administratively complete:

(A) notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness); and

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once as required by §39.405(f)(2) of this title (relating to General Notice Provisions). In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice must comply with §39.411 of this title (relating to Text of Public Notice). The deadline for public comments on industrial solid waste applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) For an application for a new hazardous waste facility, the agency:

(A) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning this application:

(i) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(ii) if the executive director determines that there is substantial public interest in the proposed facility.

(2) For an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit, the agency:

(A) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application; but

(B) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(i) on the request of a member of the legislature who represents the general area in which the facility is located; or

(ii) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location at which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location at which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) For an application for a new industrial or hazardous waste facility that would accept municipal solid waste, the applicant may hold a public meeting in the county in which the facility is proposed to be located.

(5) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of paragraph (1) or (2) of this subsection if public notice is provided under this subsection.

(6) The applicant shall publish notice of any public meeting under this subsection, in accordance with §39.405(f)(2) of this title, once each week during the three weeks preceding a public meeting. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). For public meetings under paragraph (3) of this subsection, the notice of public meeting is not subject to §39.411(d) of this title, but instead must contain at least the following information:

(A) permit application number;

(B) applicant's name;

(C) proposed location of the facility;

(D) location and availability of copies of the application;

(E) location, date, and time of the public meeting; and

(F) name, address, and telephone number of the contact person for the applicant from whom interested persons may obtain further information.

(7) For public meetings held by the agency under paragraph (1) or (2) of this subsection, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) or have a total size of at least nine column inches (18 square inches). The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in §39.413(1) of this title. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (d)(2) of this section.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the hearing.

(g) Injection wells. This section does not apply to applications for an injection well permit.

(h) Information repository. The requirements of 40 CFR §124.33(b) - (f), which is adopted by reference as amended and adopted in the CFR through December 11, 1995 (60 FR 63417), apply to all applications for hazardous waste permits.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER M. PUBLIC NOTICE FOR RADIOACTIVE MATERIAL LICENSES

30 TAC §39.709

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §401.051, which authorizes the commission adopt rules relating to control of sources of radiation. In

addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

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 P. OTHER NOTICE REQUIREMENTS

30 TAC §§39.1001, 39.1003, 39.1005, 39.1007, 39.1009, 39.1011

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The new sections are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste. In addition, the new sections are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§39.1003. Notice of Application for Minor Amendments.

(a) Except as provided in subsection (d) of this section, the only required notice for applications for a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) is that the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). For an application for a minor amendment of an injection well permit, the chief clerk shall also mail notice to the persons entitled to receive notice under §39.651(c)(4) of this title (relating to Application for Injection Well Permit).

(b) The text of the notice of application for minor amendment of a permit must provide:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the application and business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of public comment procedures;

(6) the application or permit number;

(7) a statement that the executive director may issue final approval of the application;

(8) a statement of whether the executive director has prepared a draft permit; and

(9) the deadline to file comments.

(c) The deadline to file public comment is ten days after mailing.

(d) Subsection (a) of this section does not apply to applications for a minor amendment or minor modification of a wastewater discharge permit. For such applications, the notice requirements are in §39.551 of this title (relating to Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603.

The commission adopts the amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 *without changes* to the proposed text as published in the November 8, 2019, issue of the

Texas Register (44 TexReg 6733). The rules will not be republished.

The adopted amendments to §§39.405(g)(3) and (h)(2)(C) and (3); 39.411(e)(4)(A)(i) and (ii), (e)(5), (f)(8) and (9), and (g); 39.419(e)(1); 39.420(b)(6) and (d)(6); 39.601; and 39.603 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission concurrently adopts the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission adopts amendments to 30 TAC Chapters 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the SIP are also necessary. The adopted amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 update or remove obsolete text.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to the EPA's finding that the revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, the EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

As part of this rulemaking, the commission adopts non-substantive changes, such as grammatical corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

Subchapter H: Applicability and General Provisions

§39.405, General Notice Provisions

The commission adopts amended §39.405(g)(3) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review. The commission also adopts amended §39.405(h)(2)(C) and (3) to update cross-references to 19 TAC Chapter 89.

§39.411, Text of Public Notice

The commission adopts amended §39.411(e)(4)(A)(i) and (ii), (e)(5), (f)(8) and (9), and (g) to remove obsolete text because no applications filed prior to June 18, 2010 remain pending for commission review.

§39.419, Notice of Application and Preliminary Decision

The commission adopts amended §39.419(e)(1) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review.

§39.420, Transmittal of the Executive Director's Response to Comments and Decision

The commission adopts amended §39.420(b)(6) and (d)(6) to update the reference from the commission's Office of Public Assistance to the External Relations Division.

Subchapter K: Public Notice of Air Quality Permit Applications

§39.601, Applicability

The commission adopts amended §39.601 to remove obsolete text because no applications declared administratively complete before September 1, 1999 remain pending for the commission's review.

§39.603, Newspaper Notice

The commission adopts amended §39.603(f)(1) and (g) to update cross-references.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent

of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do the amendments affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes obsolete text and updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain air quality permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 are procedural in nature and will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that will otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendments to §§39.405, 39.411, 39.419, 39.420, 39.601, and 39.603 will not require any changes to outstanding federal operating permits.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §§39.405, 39.411, 39.419, 39.420

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.056.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

30 TAC §39.601, §39.603

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are also adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.056.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 *without changes* to the proposal as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6744). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The rules in Chapter 50, Subchapters A - C were initially adopted to be effective June 6, 1996 (May 28, 1996, issue of the *Texas Register* (21 TexReg 4734)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 50, Subchapters A - C.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking repeals obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and removes unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The commission also concurrently adopts amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: Purpose, Applicability, and Definitions

The commission adopts the repeal of §50.2. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Action by the Commission

The commission adopts the repeal of §§50.13, 50.15, 50.17, and 50.19. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter C: Action by Executive Director

The commission adopts the repeal of §§50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted repeal of §§50.2, 50.13, 50.15, 50.17, 50.19, 50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, and 50.45 is procedural in nature and will not burden private real property. The adopted rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rules adopted for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections adopted for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER A. PURPOSE, APPLICABILITY, AND DEFINITIONS

30 TAC §50.2

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also adopted under Texas Health and Safety Code (THSC), §361.011, which

provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

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. ACTION BY THE COMMISSION

30 TAC §§50.13, 50.15, 50.17, 50.19

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

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. ACTION BY EXECUTIVE DIRECTOR

30 TAC §§50.31, 50.33, 50.35, 50.37, 50.39, 50.41, 50.43, 50.45

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.017 and §361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§50.102, 50.113, 50.131, and 50.139.

The amendments to §§50.102, 50.113, 50.131, and 50.139 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6748). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references. Additionally, on August 14, 2019, the commission determined that the rules regarding voluntary emission reduction permits in 30 TAC Chapter 116 are also obsolete and no longer needed because the expiration dates and application deadlines in those rules have passed (August 30, 2019, issue of the *Texas Register* (44 TexReg 4750)). The repeal of the obsolete rules in Chapter 116, in which revisions to the State Implementation Plan (SIP) are not necessary, will be addressed in a separate rulemaking (Rule Project Number 2020-001-116-AI).

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendments to §§50.102, 50.113, 50.131, and 50.139 remove obsolete text and make grammatical corrections.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the SIP are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical or reference corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§50.102, Applicability

The commission adopts amended §50.102(a) to remove references to text that refers to obsolete rules concurrently adopted for repeal. Section 50.102(c) is amended to remove obsolete text.

§50.113, Applicability and Action on Application

The commission adopts to remove obsolete text from §50.113(a) that refers to rules concurrently adopted for repeal. Section 50.113(d)(2) is amended to remove obsolete text.

§50.131, Purpose and Applicability

The commission adopts amended §50.131(b) to remove obsolete text concurrently adopted for repeal.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§50.102, 50.113, 50.131, and 50.139 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes obsolete text to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§50.102, 50.113, 50.131, and 50.139 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

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

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Sections 50.102, 50.113, 50.131, and 50.139 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER E. PURPOSE, APPLICABILITY, AND DEFINITIONS

30 TAC §50.102

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

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 F. ACTION BY THE COMMISSION

30 TAC §50.113

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

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 G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131, §50.139

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 *without changes* to the proposal as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6753). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The rules in Chapter 55, Subchapters A and B were initially adopted to be effective June 6, 1996 (May 28, 1996, issue of the *Texas Register* (21 TexReg 4742)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including those in Chapter 55, Subchapters A and B.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking repeals obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The commission also concurrently adopts amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Imple-

mentation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: Applicability and Definitions

The commission adopts the repeal of §55.1 and §55.3. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter B: Hearing Requests, Public Comment

The commission adopts the repeal of §§55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31. These rules apply to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted repeal of §§55.1, 55.3, 55.21, 55.23, 55.25 - 55.27, 55.29, and 55.31 is procedural in nature and will not burden private real property. The adopted rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rules adopted for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections adopted for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER A. APPLICABILITY AND DEFINITIONS

30 TAC §55.1, §55.3

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the

commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

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. HEARING REQUESTS, PUBLIC COMMENT

30 TAC §§55.21, 55.23, 55.25 - 55.27, 55.29, 55.31

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

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SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §55.154, §55.156

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §55.154 and §55.156.

The commission adopts the amendments to §55.154 and §55.156 *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6756).

The adopted amendments to §55.154(c), (c)(3) and (4), (e), and (f) and §55.156(a), (c), and (f) will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission concurrently adopts the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is adopting amendments to 30 TAC Chapters 39, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the SIP are also necessary. Section 55.154 and §55.156 include text that is now obsolete, and this rulemaking updates or removes that text.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and

new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to the EPA's finding that the revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, the EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

As part of this rulemaking, the commission adopts non-substantive changes, such as grammatical corrections. Since, these changes are non-substantive, the changes are not specifically discussed in this preamble.

Subchapter E: Public Comment and Public Meetings

§55.154, Public Meetings

The commission adopts amended §55.154(c) and (e) to update the reference from the commission's Office of Public Assistance to commission's Office of the Chief Clerk. The commission adopts amended §55.154(c)(3) and (4) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review. The commission also adopts amended §55.154(f) to replace the obsolete reference to a tape recording with a reference to an audio recording.

§55.156, Public Comment Processing

The commission adopts amended §55.156(a) to remove the reference to the commission's Office of Public Assistance, which no longer exists. The commission adopts amended §55.156(c) to update the reference from the commission's Office of Public Assistance to the director of the External Relations Division. In addition, the commission adopts amended §55.156(f)(1) to remove obsolete text because no applications filed prior to June 24, 2010 remain pending for commission review.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §55.154 and §55.156 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do the amendments affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes obsolete text and updates agency references to ensure there is no confusion regarding the applicable rules for public participation for certain air quality permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §55.154 and §55.156 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments to §55.154 and §55.156 are procedural in nature and will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that will otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted amendments to §55.154 and §55.156 will not require any changes to outstanding federal operating permits.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.056.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§55.201, 55.209, 55.253, and 55.254.

The amendments to §§55.201, 55.209, and 55.254 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6760) and, therefore, will not be republished. The amendment to §55.253 is adopted *with change* to the proposed text, and therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references. Additionally, on August 14, 2019, the commission determined that the rules regarding voluntary emission reduction permits in 30 TAC Chapter 116 are also obsolete and no longer needed because the expiration dates and application deadlines in those rules have passed (August 30, 2019, issue of the *Texas Register* (44 TexReg 4750)). The repeal of the obsolete rules in Chapter 116, in which revisions to the State Implementation Plan (SIP) are not necessary, is addressed in a separate rulemaking project (Rule Project Number 2020-001-116-AI).

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice require-

ments for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendments to §§55.201, 55.209, 55.253, and 55.254 remove or update obsolete text.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the SIP are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§55.201, Requests for Reconsideration or Contested Case Hearing

The commission adopts amended §55.201(i)(3)(A) to remove the reference to voluntary emission reduction permits because the commission no longer issues these permits.

§55.209, Processing Requests for Reconsideration and Contested Case Hearing

The commission adopts amended §55.209(d) to update the reference from the commission's Office of Public Assistance to the External Relations Division.

§55.253, Public Comment Processing

The commission adopts amended §55.253(a) to remove the outdated reference to the commission's Office of Public Assistance, which no longer exists. In addition, the commission adopts to remove obsolete text in §55.253(b)(1), and re-designate existing §55.253(b)(1)(A) and (B) as §55.253(b)(1) and (2). Additionally, the commission adopts to re-designate existing §55.253(b)(2) as §55.253(c).

The commission also amends adopts amended re-designated §55.253(c) to update the references from the commission's Office of Public Assistance and designated office to the Office of Chief Clerk or the executive director. At adoption, the commission amends §55.253(c) to replace "APA" with "Texas Administrative Procedure Act."

§55.254, Hearing Request Processing

The commission adopts amended §55.254(e) to update the reference from the commission's Office of Public Assistance to the External Relations Division.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§55.201, 55.209, 55.253, and 55.254 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes obsolete text to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§55.201, 55.209, 55.253, and 55.254 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments to §§55.201, 55.209, 55.253, and 55.254 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Sections 55.201, 55.209, 55.253, and 55.254 are not applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201, §55.209

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.059, which authorized certain permit applications to be filed prior to September 1, 2001. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

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 G. REQUESTS FOR CONTESTED CASE HEARING AND PUBLIC COMMENT ON CERTAIN APPLICATIONS

30 TAC §55.253, §55.254

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§55.253. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the applicant, the executive director, the public interest counsel, and the Alternative Dispute Resolution Office, copies of all documents filed with the chief clerk in response to public notice of an application.

(b) The commission may designate an agency office to process public comment under this subsection.

(1) If the application and timely hearing requests are considered by the commission, the designated office will prepare any required response to public comment, no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk.

(2) If the application is approved by the executive director under Chapter 50, Subchapter G of this title (relating to Action by the Executive Director), any required response to public comment should be made no later than the time of the executive director's action on the application.

(c) The Office of Chief Clerk or the executive director shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment and is not a contested case under the Texas Administrative Procedure Act. The applicant shall attend any such public meeting held by the Office of the Chief Clerk or the executive director. The executive di-

rector shall respond to public comment either by giving an immediate oral response at the public meeting or by preparing a written response. The response shall be made available to the public.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 60. COMPLIANCE HISTORY

30 TAC §60.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §60.1.

The amendment to §60.1 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6766). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are adopted in new Chapter 39, Subchapter P. The adopted amendment to §60.1 removes an obsolete cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission adopts non-substantive changes, such as grammatical and reference corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§60.1, Compliance History

The commission adopts amended §60.1(a)(8) to remove the references to §50.39 (Motion for Reconsideration), which is concurrently adopted for repeal.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §60.1 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes an obsolete cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §60.1 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not

subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §60.1 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 60.1 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on applicable requirements is expected for sites subject to the Federal Operating Permits (FOP) Program. However, sites subject to the FOP Program are subject to the requirements of Chapter 60 and permit holders should review any rule changes for how compliance history information may be used in agency processes.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §5.753, which authorizes the commission to develop standards for evaluating and using the compliance history; TWC, §5.754, which authorizes the commission to adopt rules that establish standards for classifications of compliance history; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The amendment implements TWC, §§5.013, 5.102, 5.103, 5.122, 5.753, 5.754, 26.011, and 27.019, and THSC, §361.024 and §382.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 70. ENFORCEMENT
SUBCHAPTER C. ENFORCEMENT REFERRALS TO SOAH

30 TAC §70.109

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §70.109.

The amendment to §70.109 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6770). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared adminis-

tratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §70.109 updates a cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission adopts non-substantive changes, such as grammatical or reference corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§70.109, Referral to SOAH

The commission adopts amended §70.109 to update the cross-reference from §80.5, which is concurrently adopted for repeal, to §80.6.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §70.109 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes an obsolete cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §70.109 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §70.109 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 70.109 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on applicable requirements is expected for sites subject to the Federal Operating Permits (FOP) Program. However, sites subject to the FOP Program are still subject to the requirements of Chapter 70 and permit holders should review any rule changes for how they may affect site operations.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells; and TWC, Chapter 7, which provides the commission's enforcement authority. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendment is adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; TWC, Chapter 7; and THSC, §361.024 and §382.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§80.3, 80.5, and 80.251 *without changes* to the proposal as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6772). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Sections 80.3, 80.5, and 80.251 were initially adopted to be effective June 6, 1996 (May 28, 1996, issue of the *Texas Register* (21 TexReg 4763)). In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, including §§80.3, 80.5, and 80.251.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 were obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). This rulemaking repeals obsolete rules to eliminate any possible confusion as to what the applicable public participation requirements are and remove unnecessary sections from the commission's rules.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the applicability date. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The commission also concurrently adopts amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

Subchapter A: General Rules

§80.3, Judges

The commission adopts the repeal of §80.3. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

§80.5, Referral to SOAH

The commission adopts the repeal of §80.5. This rule applies to permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Subchapter F: Post Hearing Procedures

§80.251, Judge's Proposal for Decision

The commission adopts the repeal of §80.251. This rule applies to permitting applications that were administratively com-

plete before September 1, 1999. No pending applications meet that criterion.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal of §§80.3, 80.5, and 80.251 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking repeals obsolete rules to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted repeal of §§80.3, 80.5, and 80.251 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted repeal of §§80.3, 80.5, and 80.251 is procedural in nature and will not burden private real property. The adopted rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rules adopted for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

None of the sections adopted for repeal are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER A. GENERAL RULES

30 TAC §80.3, §80.5

Statutory Authority

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeals are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

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 F. POST HEARING PROCEDURES

30 TAC §80.251

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The repeal is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, 26.011, and 27.019; and THSC, §361.024 and §382.017.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 80. CONTESTED CASE HEARINGS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§80.109, 80.117, 80.118, and 80.151.

The amendments to §80.109 and §80.117 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6775) and, therefore, will not be republished. The amendments to §80.118 and §80.151 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendments to §§80.109, 80.117, 80.118, and 80.151 remove obsolete text and update text to ensure statutory consistency.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical or reference corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§80.109, Designation of Parties

The commission adopts amended §80.109(b)(5) to remove a cross-reference to §55.29 (Determination of Affected Person), which is concurrently adopted for repeal.

§80.117, Order of Presentation

The commission adopts amended §80.117(c)(1)(B) to correct a drafting error to ensure the rule is consistent with Texas Government Code, §2003.047(i-1)(2), added by Senate Bill (SB) 709 (84th Texas Legislature, 2015). Rulemaking to implement SB 709, including the amendment to §80.117, was adopted by the commission on December 9, 2015 (December 25, 2015, issue of the *Texas Register* (40 TexReg 9641, 9680)).

§80.118, Administrative Record

The commission adopts amended §80.118(b) to remove a cross-reference to §80.5 (Referral to SOAH), which is concurrently adopted for repeal. At adoption, the commission amends §80.118(b) to conform the reference to Texas Register style requirements.

§80.151, Discovery Generally

The commission adopts amended §80.151 to remove §80.151(b)(1)(A) and re-letter subsequent subparagraphs accordingly. At adoption, the commission amends §80.151(a) to correct the cite to the Texas Administrative Procedure Act and §80.151(b)(1) to correct a typographical error in the reference to the State Office of Administrative Hearings' rule.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§80.109, 80.117, 80.118, and 80.151 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§80.109, 80.117, 80.118, and 80.151 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments to §§80.109, 80.117, 80.118, and 80.151 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Sections 80.109, 80.117, 80.118, and 80.151 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER C. HEARING PROCEDURES

30 TAC §§80.109, 80.117, 80.118

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.115, which provides authority regarding persons affected in commission hearings; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code

(THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendments are adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§80.118. Administrative Record.

(a) Except as provided in subsection (c) of this section, in all permit hearings, the record in a contested case includes, at a minimum, the following certified copies of documents:

(1) the executive director's final draft permit, including any special provisions or conditions;

(2) the executive director's preliminary decision, or the executive director's decision on the permit application, if applicable;

(3) the summary of the technical review of the permit application;

(4) the compliance summary of the applicant;

(5) copies of the public notices relating to the permit application, as well as affidavits regarding public notices; and

(6) any agency document determined by the executive director to be necessary to reflect the administrative and technical review of the application.

(b) For purposes of referral to the State Office of Administrative Hearings (SOAH) under §80.6 of this title (relating to Referral to SOAH), of applications filed before September 1, 2015, or applications not referred under Texas Water Code, §5.556 or §5.557, the chief clerk's case file shall contain the administrative record as described in subsection (a) of this section.

(c) In all hearings on permit applications filed on or after September 1, 2015, which are referred for hearing under Texas Water Code, §5.556 or §5.557, the administrative record in a contested case filed by the chief clerk with SOAH includes the following certified copies of documents:

(1) the items in subsection (a)(1) - (6) of this section, including technical memoranda, that demonstrate the draft permit meets all applicable requirements and, if issued, would protect human health and safety, the environment, and physical property; and

(2) the application submitted by the applicant, including revisions to the original submittal.

(d) For purposes of referral to SOAH under §80.6 of this title for hearings regarding permit applications filed on or after September 1, 2015, that are referred under Texas Water Code, §5.556 and §5.557, the applicant shall provide two duplicates of the original application, including all revisions to the application, to the chief clerk for inclusion in the administrative record in the format and time required by the procedures of the commission, no later than:

(1) for applications referred by the commission, 10 days after the chief clerk mails the commission order; or

(2) for applications referred by the applicant or executive director, 10 days after the chief clerk mails the executive director's response to comments.

(e) For purposes of referral to SOAH under §80.6 of this title for hearings regarding permit applications filed on or after September 1, 2015, that are referred under Texas Water Code, §5.556 and §5.557, the chief clerk shall file the administrative record with SOAH at least 30 days prior to the hearing.

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 D. DISCOVERY

30 TAC §80.151

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.115, which provides authority regarding persons affected in commission hearings; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; and THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2003.047, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

§80.151. Discovery Generally.

(a) Discovery shall be conducted according to the Texas Rules of Civil Procedure, unless commission rules provide or the judge orders otherwise. The Texas Rules of Civil Procedure shall be interpreted consistently with this chapter, the Texas Water Code, the Texas Health and Safety Code, and the Texas Administrative Procedure Act. Drafts of prefiled testimony are not discoverable.

(b) Discovery in contested case hearings using prefiled testimony.

(1) This subsection is applicable to contested case hearings for applications which are subject to the jurisdiction of the State Office of Administrative Hearings (SOAH) under 1 TAC §155.51 (relating to Jurisdiction), except for:

(A) water ratemaking proceedings; and

(B) sewer ratemaking proceedings.

(2) All discovery on a party must be completed before the deadline for that party to submit its prefiled testimony.

(3) In cases where all parties share the same deadline for submission of prefiled testimony, a single deadline for completion of discovery shall apply to all parties.

(4) If parties have different deadlines for the submission of prefiled testimony, the deadline to complete discovery on a party shall be no later than the final deadline for that party to submit prefiled testimony. After a party's final deadline to submit its prefiled testimony in a contested case, that party is no longer subject to discovery from other parties in the case.

(5) The requirements of this subsection do not relieve a party's duty to supplement its discovery responses as required by Texas Rules of Civil Procedure, §193.5 and §195.6.

(c) All other contested case hearings are governed by this section as it existed immediately before the effective date of this section and the rule is continued in effect for that purpose.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 90. INNOVATIVE PROGRAMS
SUBCHAPTER A. INCENTIVE PROGRAMS

30 TAC §90.22

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §90.22.

The amendment to §90.22 is adopted *without change* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6779) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and these rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §90.22 updates a cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§90.22, Commission Action on an Application

The commission adopts amended §90.22(a) to update a cross-reference from Chapter 50, Subchapter B, which is concurrently adopted for repeal, to Chapter 50, Subchapter F.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that

statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §90.22 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes an obsolete cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §90.22 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §90.22 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 90.22 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapters M and Q; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.115, which provides authority regarding persons affected in commission hearings; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters M and Q; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024 and §382.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

DIVISION 1. EMISSION CREDIT PROGRAM

30 TAC §101.306

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §101.306.

The commission adopts the amendment to §101.306 *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6782). The rule will not be republished.

The adopted amendment to §101.306 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission concurrently adopts the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission adopts amendments to 30 TAC Chapters 39, 55, and 116 to make necessary changes due to the adopted repeals for which revisions to the SIP are also necessary. The adopted amendment to §101.306 updates cross-references to current applicable rules.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to the EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, the EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section Discussion

Subchapter H: Emissions Banking and Trading

Division 1: Emission Credit Program

§101.306, Emission Credit Use

The commission adopts amended §101.306(c)(2) to update the cross-references to 30 TAC Chapter 50.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §101.306 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment of §101.306 does not exceed an express requirement of state law or a requirement of a delegation agreement, and the rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §101.306 is procedural in nature and will not burden private real property. The adopted amendment does not affect private property in a manner that restricts or limits an owner's right to the property that will otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adopted rule is identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 101.306 is an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program). However, the adopted amendment to update cross-references is procedural in nature and therefore no effect on sites subject to the Federal Operating Permits Program is expected. The adopted amendment will not require any changes to outstanding federal operating permits.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.122, which authorizes the commission to delegate to the executive director the authority to act on an application. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. In addition, the amendment is adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements TWC, §5.122; and THSC, §382.011 and §382.012.

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 24, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 1. PERMIT APPLICATION

30 TAC §116.111, §116.112

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §116.111 and §116.112.

The commission adopts the amendments to §116.111 and §116.112 *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6785). The rules will not be republished.

The adopted amendments to §116.111 and §116.112(a) will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission concurrently adopts the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission adopts amendments to Chapters 39, 55, and 101 to make necessary changes due to the adopted repeals for which revisions to the SIP are also necessary. The adopted amendments to §116.111 and §116.112 update or remove obsolete text and update cross-references to current applicable rules.

Concurrently with this rulemaking, the commission adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals (Rule Project Number 2019-121-033-LS). In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing, but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P.

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Federal Clean Air Act, §110(l)

All revisions to the SIP are subject to the EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act (74 United States Code (USC), §7410(l)). This statute has been interpreted to be whether the revision will "make air quality worse" *(Kentucky Resources Council, Inc. v. EPA,* 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA,* 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, the EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

As part of this rulemaking, the commission adopts non-substantive changes, such as grammatical corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

Subchapter B: New Source Review Permits

Division 1: Permit Application

§116.111, General Application

The commission removes obsolete text in §116.111(b) referring to requirements for applications declared administratively complete before September 1, 1999. Portions of §116.111(b)(2) will be re-designated as §116.111(c).

§116.112, Distance Limitations

The commission removes obsolete text in §116.112(a) which references Chapter 39, Subchapters A and D, which are concurrently adopted for repeal.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to remove text in §116.111 and §116.112 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does the rulemaking affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking removes obsolete text and proposes that the EPA approve the rules as revisions to the SIP to ensure there is no confusion regarding the applicable rules for public participation for air quality permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §116.111 and §116.112 do not exceed an express requirement of state law or a requirement of a delegation agreement, and the amendments were not developed solely under the general powers of the agency, but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. There-

fore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to remove text in §116.111 and §116.112 is procedural in nature and will not burden private real property. The adopted rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that will otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the rules are identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 116.111 and §116.112 are applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program). However, the text adopted to be removed from §116.111 and §116.112 is procedural in nature and therefore no effect on sites subject to the Federal Operating Permits Program is expected. The adopted amendments will not require any changes to outstanding federal operating permits.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendments are adopted under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and §2003.047, concerning Hearings for Texas Commission on Environmental Quality, which authorizes the State Office of Administrative Hearings to conduct hearings for the commission; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.056.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 205. GENERAL PERMITS FOR WASTE DISCHARGES

SUBCHAPTER A. GENERAL PERMITS FOR WASTE DISCHARGES

30 TAC §205.3

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §205.3.

The amendment to §205.3 is adopted *without change* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6789) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 285, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §205.3 updates obsolete cross-references.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission adopts non-substantive changes, such as grammatical or reference corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§205.3, Public Notice, Public Meetings, and Public Comment

The commission adopts amended §205.3(c)(1) and (d)(4) to update the cross-reference from §39.11, which is concurrently adopted for repeal, to §39.411.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §205.3 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §205.3 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §205.3 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined

that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 205.3 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §26.040, which authorizes the commission to adopt rules for general permits to authorize discharge of wastes; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 26.040.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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

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CHAPTER 285. ON-SITE SEWAGE FACILITIES
SUBCHAPTER B. LOCAL ADMINISTRATION OF THE OSSF PROGRAM

30 TAC §285.10

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §285.10.

The amendment to §285.10 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6792). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 294, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §285.10 updates an obsolete cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission adopts non-substantive changes, such as, grammatical corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§285.10, Delegation to Authorized Agents

The commission adopts amended §285.10(b)(9) to update the cross-reference from §50.39, which is concurrently adopted for

repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §285.10 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §285.10 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §285.10 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 285.10 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas. The amendment is also adopted under Texas Health and Safety Code (THSC), §366.012, which authorizes the commission to adopt rules to administer the regulation of on-site sewage disposal systems, and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011; and THSC, Chapter 366.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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CHAPTER 294. PRIORITY GROUNDWATER MANAGEMENT AREAS
SUBCHAPTER E. DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREAS
30 TAC §294.42

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §294.42.

The amendment to §294.42 is adopted *with changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6796). The rule will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently adopting amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 305, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §294.42 removes an obsolete cross-reference.

The commission adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§294.42, Commission Action Concerning PGMA Designation

The commission adopts amended §294.42(a) to update the cross-reference from §50.39, which is concurrently adopted for repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

At adoption, the commission amends §294.42(b)(1) to remove "Texas" from the name of "State Office of Administrative Hearings."

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §294.42 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §294.42 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §294.42 does not affect private property in a manner that

restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 294.42 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §35.008, which authorizes the commission to adopt rules regarding the creation of a district over all or part of a priority groundwater management area; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011; and TWC, Chapter 35.

§294.42. Commission Action Concerning PGMA Designation.

(a) If the executive director concludes in the report that the area studied is not a priority groundwater management area (PGMA), no further action by the executive director or the commission is necessary. However, any person may file a motion to overturn under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(b) If the executive director recommends that the area be designated a PGMA or added to an existing PGMA, or if the commission overturns the executive director's conclusion in subsection (a) of this section, the commission shall consider the executive director's PGMA report and recommendations developed under §294.41 of this title (relating to Priority Groundwater Management Area Identification, Study, and Executive Director's Report Concerning Designation) using the following procedures.

(1) The commission shall hold an evidentiary hearing. On behalf of the commission, the executive director may refer the evidentiary hearing directly to the State Office of Administrative Hearings (SOAH). At the evidentiary hearing, the commission or the administrative law judge shall consider:

(A) whether the proposed PGMA should be designated or added to an existing PGMA;

(B) whether one or more groundwater conservation districts (GCDs) should be created within all or part of the proposed PGMA, whether all or part of the land in the PGMA should be added to an existing GCD, or whether a combination of these actions should be taken; and

(C) the feasibility and practicability of each GCD recommendation. To determine the feasibility and practicability of each GCD recommendation, the commission or the administrative law judge shall consider:

(i) whether the recommended GCD can effectively manage groundwater resources under the authorities provided in Texas Water Code (TWC), Chapter 36;

(ii) whether the boundaries of the recommended GCD provide for the effective management of groundwater resources; and

(iii) whether the recommended GCD can be adequately funded to finance required or authorized groundwater management planning, regulatory, and district-operation functions under TWC, Chapter 36.

(2) The evidentiary hearing shall be held in one of the counties in which the PGMA is proposed to be located or in the nearest convenient location if adequate facilities are not available in those counties.

(3) The chief clerk shall publish notice of the evidentiary hearing in at least one newspaper with general circulation in the area proposed for PGMA designation. The notice must be published no later than 30 days before the first date set for the hearing. Notice of the evidentiary hearing must include:

(A) if applicable, a statement of the general purpose and effect of designating the proposed PGMA;

(B) if applicable, a statement of the general purpose and effect of creating a new GCD in the proposed PGMA;

(C) if applicable, a statement of the general purpose and effect of adding all or part of the land in the proposed PGMA to an existing GCD;

(D) a map generally outlining the boundaries of the area being considered for PGMA designation or notice of the location at which a copy of the map may be examined or obtained;

(E) a statement that the executive director's report on the proposed PGMA is available for inspection during regular business hours at the commission's main office in Austin, Texas, at regional offices of the commission which include territory within the proposed PGMA, and on the agency's website;

(F) the name and address of each public library, each county clerk's office, and each GCD that has been provided copies of the executive director's report; and

(G) the date, time, and place of the hearing.

(4) The chief clerk shall also mail written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent GCD, municipality, river authority, water district, or other entity which supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the PGMA or proposed PGMA. This notice shall be mailed at least 30 days before the date set for the hearing.

(5) The evidentiary hearing must be conducted within 75 days of the date that notice was provided under paragraph (3) of this subsection. At the hearing, the commission or the administrative law judge shall hear testimony and receive evidence from affected persons, and consider the executive director's report and supporting information. The commission or the administrative law judge may request additional information from any source if further information is considered necessary to make a decision. If the commission or administrative law judge requests additional information, the parties will be allowed to examine this information and present any necessary evidence related to the additional information.

(6) If the hearing is remanded to SOAH, the administrative law judge shall at the conclusion of the hearing, issue a proposal for decision stating findings, conclusions, and recommendations. The administrative law judge shall file findings and conclusions with the chief clerk.

(c) The commission shall consider the findings, conclusions, and recommendations determined from the evidentiary hearing. The commission shall order one or more of the following actions.

(1) Except as provided in paragraph (3) of this subsection, if the commission decides that an area should be designated as a PGMA or adds the area to an existing PGMA, the commission shall designate and delineate the boundaries of the PGMA.

(2) If the commission designates the area as a PGMA or adds the area to an existing PGMA, the order must recommend that the area be covered by a GCD by either creation of one or more new GCDs, by addition of the land in the PGMA to one or more existing GCDs, or by a combination of these actions. The commission shall give preference to GCD boundaries that are coterminous with the boundaries of the PGMA, but may recommend GCD boundaries based upon existing political subdivision boundaries to facilitate creation of a GCD.

(3) If the commission does not designate the area as a PGMA, the commission shall issue an order stating that the PGMA shall not be designated.

(4) If the commission finds that a GCD created under TWC, Chapter 36 would not be feasible or practicable for the protection of groundwater resources in the PGMA, the commission may recommend in its report to the legislature under TWC, §35.018, the creation of a special district or amendment of an existing district's powers and authorities.

(5) The designation of a PGMA may not be appealed nor may it be challenged under TWC, §5.351 or Texas Government Code, §2001.038.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 295. WATER RIGHTS, PROCEDURAL

SUBCHAPTER C. NOTICE REQUIREMENTS FOR WATER RIGHT APPLICATIONS

30 TAC §295.159

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §295.159 *with changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6799). The rule will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

A petition for rulemaking was filed with the commission on February 5, 2019, by Lloyd Gosselink Rochelle & Townsend, P.C. on behalf of the City of Wichita Falls (petitioner). The petitioner requested that §295.159 be amended to include an exception from the notice requirements for orders to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water. This rulemaking was opened pursuant to the commission's order dated March 28, 2019, in which the commission granted the petition considered at a March 27, 2019, public meeting (Project No. 2019-098-PET-NR). The commission's order required an opportunity for stakeholder involvement concerning the issues raised in the petition prior to rule proposal. Therefore, an informal stakeholder meeting was held at the TCEQ on June 13, 2019, and comments were accepted by the commission until June 27, 2019. All comments were considered.

Section Discussion

§295.159, Notice of Extension of Time to Commence or Complete Construction

The commission adopts §295.159(c) which provides that the notice requirements in §295.159(a) and (b) do not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water. Existing §295.159(a) requires published notice and mailed notice (to the same persons to whom notice of the original application for the permit was mailed) for a request for an extension of time to construct if the new date of proposed commencement of construction is more than four years from the date of issuance of the permit or if the new proposed completion time is more than five years from the date of completion required in the original permit. Existing §295.159(b) states that the notice must provide that the commission shall consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

Texas Water Code (TWC), §11.145 provides that the commission may, by entering an order of record, extend the time for beginning construction of a reservoir, but does not require notice for such extensions. TWC, §11.146, provides that if a permittee fails to begin construction within the time specified in TWC, §11.145, the permittee forfeits all rights to the permit, subject to notice and hearing as prescribed by this section. However, TWC, §11.146(g), provides an exemption from forfeiture under this section for a permit for construction of a reservoir designed for the storage of more than 50,000 acre-feet of water. Therefore, adopted §295.159(c) providing for exempting such reservoirs from notice for extension of time for commencement or completion of construction is consistent with the TWC. In existing subsection (a), the commission corrected a typographical error by deleting a stray sentence fragment.

Final Regulatory Impact 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. The definition of "Major environmental rule" in Texas Government Code, §2001.0225(g)(3), 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 sector of the state."

The purpose of the adopted rule is to amend §295.159, which requires mailed and published notice for an application to extend the deadline for commencement of construction more than four years or to extend the deadline for completion more than five years. This adopted amendment to §295.159 includes an exception from the notice requirements for applications to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

The specific intent of the adopted rule is to exempt requests for commencement and completion of large reservoirs, 50,000 acre-feet or more, from notice requirements due to the complexity of constructing large reservoirs and the need for other approvals such as from the Corps of Engineers. Allowing the permittees to proceed without the need for notice is a more efficient and reasonable approach to obtaining needed water supplies for a growing state.

Additionally, the amendment to §295.159 is consistent with TWC, §11.145 and §11.146. TWC, §11.145, does not require that the commission provide notice of amendments extending the time for commencement or completion of construction of a reservoir if the permit is to construct a reservoir designed for storage of more than 50,000 acre-feet of water. TWC, §11.146, provides an exception from forfeiture or cancellation of a permit for failure to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

Thus, the specific intent of this rulemaking is not 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 sector of the state. The adopted rulemaking is a procedural rule, is not a "Major environmental rule," and a full Regulatory Impact Analysis (RIA) is not required.

Even if the adopted rule was a "Major environmental rule," Texas Government Code, §2001.0225, applies to a "Major environmental rule" which exceed standards set by federal law unless the rule is specifically required by state law; exceed requirements of a delegation agreements between state and federal governments to implement a state and federal program; or are adopted solely under the general powers of the agency instead of under a specific state law. This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being adopted solely under the TCEQ's general rulemaking authority. It is an amendment of an existing rule that was adopted under TWC, §11.145 and §11.146, as previously discussed. It is not based solely under the general powers of the agency instead of under a specific state law.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted amendment and performed analysis of whether the adopted rule constitutes a takings under Texas Government Code, Chapter 2007.

This adopted rulemaking will amend §295.159, which requires mailed and published notice for an application to extend the deadline for commencement of construction more than four years or to extend the deadline for completion more than five years. This adopted amendment to §295.159 includes an exception from this notice requirement for applications to extend the deadline to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

The specific intent of the adopted rule is to allow commencement and completion of large reservoirs, 50,000 acre-feet or more, to be exempt from notice requirements due to the complexity of constructing large reservoirs and the need for other approvals such as from the Corps of Engineers. Allowing the permittees to proceed without the need for notice and the possibility of another hearing is a more efficient and reasonable approach to obtaining needed water supplies for a growing state.

Additionally, the amendment to §295.159 is consistent with TWC, §11.145 and §11.146. TWC, §11.145, does not require that the commission provide notice of amendments extending the time for commencement or completion of construction of a reservoir if the permit is to construct a reservoir designed for storage of more than 50,000 acre-feet of water. TWC, §11.146, provides an exception from forfeiture or cancellation of a permit for failure to commence of complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

This rulemaking will substantially advance the stated purposes of efficiency and consistency by amending §295.159 to allow an exemption from notice for applications for extension of time to commence and complete the reservoir if the reservoir is greater than 50,000 acre-feet.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this adopted rulemaking because there are no burdens imposed on private real property by the adopted rule. This rulemaking is an administrative rule that relates to procedural requirements for an application for extension of time to commence and complete the construction

of an already permitted reservoir. The rulemaking does not affect an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's rights to the property that would otherwise exist in the absence of the governmental action.

Thus, Texas Government Code, Chapter 2007, does not apply to this adopted rule because the rulemaking does not impact private real property.

Consistency with the Coastal Management Program

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

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments regarding the CMP.

Public Comment

The commission offered a public hearing on December 3, 2019. The comment period closed on December 16, 2019. The commission received comments from the Brazos River Authority (BRA), the City of Wichita Falls (Wichita Falls), the North Texas Municipal Water District (NTMWD), and the Upper Trinity Water District (UTRWD).

BRA, Wichita Falls, NTMWD, and UTRWD supported the amendment.

Response to Comments

Comment

BRA commented that they support the rule changes to §295.159 and that the proposed change is consistent with TWC and will help to simplify the complex challenges associated with planning and constructing major reservoirs.

Response

The commission acknowledges this comment. The rule was not changed in response to this comment.

Comment

UTRWD commented that they support the rule changes and that the amendment is necessary to avoid unnecessary regulatory burdens for water rights holders planning to construct major water supply reservoirs in Texas.

Response

The commission acknowledges this comment. The rule was not changed in response to this comment.

Comment

NTMWD commented that they support the rule changes and that the rulemaking will correct a rule that requires unnecessarily burdensome public notice requirements.

Response

The commission acknowledges this comment. The rule was not changed in response to this comment.

Comment

Wichita Falls commented that they support the proposed rulemaking and that the rulemaking prevents delays in the federal permitting process from unnecessarily extending the time and resources required for the state permitting process and reduces the processing burden on TCEQ staff.

Response

The commission acknowledges this comment. The rule was not changed in response to this comment.

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the 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, §5.013(a)(1) concerning the TCEQ's authority over water and water rights; TWC, §11.145, which provides requirements for commencement of construction of a reservoir; and TWC, §11.146, which provides forfeiture or cancellation of a water rights permit for inaction.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 11.145, and 11.146.

§295.159. Notice of Extension of Time to Commence or Complete Construction.

(a) If the new date of proposed commencement of construction is more than four years from the date of issuance of the permit, or if the new proposed completion time is more than five years from the date of completion required in the original permit, notice of an application for extension of time shall be mailed and published as required by the Texas Water Code, §11.132 and §11.143, and §295.151 of this title (relating to Notice of Application and Commission Action), §295.152 of this title (relating to Notice by Publication), and §295.153 of this title (relating to Notice by Mail). The chief clerk shall mail notice of the public hearing to the same persons to whom notice of the application for the permit was mailed. The applicant shall be required to publish notice of the hearing in the same manner in which an applicant for a water use permit is required to publish notice of an application. No other notice is required.

(b) The notice of any application for an extension of time to commence or complete construction must provide that the commission shall also consider whether the appropriation shall be forfeited for failure by the applicant to demonstrate sufficient due diligence and justification for delay.

(c) This section does not apply to a permit for construction of a reservoir designed for storage of more than 50,000 acre-feet of water. No notice shall be required for an extension of time to commence or complete construction of a reservoir designed for storage of more than 50,000 acre-feet of water.

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 24, 2020.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER G. DESALINATION, PROCEDURAL

30 TAC §295.302

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §295.302.

The amendment to §295.302 is adopted *with changes* to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7127). The rule will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter. As set out in Texas Water Code (TWC), §18.002(c), the legislation provided an alternative procedure for obtaining an authorization to divert marine seawater and did not affect the authority of a person to divert marine seawater from a bay or estuary under TWC, Chapter 11.

HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 and developed a map depicting the diversion and discharge zones which is available on the GLO website on the Coastal Resources Management Viewer. The diversion zones created are applicable only to marine seawater. TPWD and GLO did not designate zones in bays or arms of the Gulf of Mexico where seawater may be diverted.

This rulemaking implements the requirement in TWC, Chapter 18, for the commission to designate appropriate diversion zones by rule.

As part of this rulemaking, the commission adopts amendments to 30 TAC Chapter 297, Water Rights, Substantive; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges, to designate appropriate diversion and discharge zones by rule.

Section Discussion

§295.302, Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater

The commission adopts the amendment to §295.302(k). Currently, §295.302(k) requires that an application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater from the Gulf of Mexico include documentation of the results of the consultation with the TPWD and the GLO regarding the point or points from which a facility the person proposes to construct may divert marine seawater or seawater. Adopted §295.302(k) requires that the application include documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones identified by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and the GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes. The commission changed the word "approved" to the word "identified" in §295.302(k)(1) to better reflect the actions taken by TPWD and GLO in developing the study and made a non-substantive typographic correction to §295.302(k)(2).

Final Regulatory Impact 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. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "{t}he purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The adopted rulemaking streamlines the process by authorizing documentation that the point or points from which

a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted amendment does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted amendment will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under specific state statutes enacted in HB 2031.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments regarding the Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rule is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The adopted rule will substantially advance this stated purpose by authorizing documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to the adopted rule because the rule does not impact private real property. In HB 2031, the legislature expressed that "{i}n this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or real private property rights that have been granted for use of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water and water for municipal and domestic needs cannot be taken from a bay or arm of the Gulf of Mexico under Chapter 295, Subchapter G.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rule include: Impoundments and diversion of state water within 200 stream miles of the coast.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The adopted rule is consistent with these CMP goals and policies because this rule does not create or have a direct or significant adverse effect on any CNRAs, and because the adopted rule requires diversion to be located in an approved diversion zone in the Gulf of Mexico or consultation with the TPWD and GLO regarding the location of any diversion point in a bay or arm of the Gulf of Mexico.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission did not receive comments regarding the CMP.

Public Comment

The commission held a public hearing on December 17, 2019. The comment period closed on January 6, 2020. The commission received no comments.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013(a)(1) concerning the commission's general jurisdiction over water and water rights; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; and TWC, §11.1405, concerning desalination of seawater for use for industrial purposes.

The adopted amendment implements TWC, §11.1405 and §18.003 and House Bill 2031 passed by the 84th Texas Legislature, 2015.

§295.302. Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater.

(a) An application for diversion of seawater from a bay or arm of the Gulf of Mexico for industrial purposes or for diversion of marine seawater must be submitted in accordance with §295.2 of this title (relating to Preparation of Application) and include, for each applicant, the full name, post office address, telephone number, and federal identification number. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be designated by the trustee's name followed by the word "trustee." If someone other than the named applicant executes the application, the name, position, post office address, and telephone number of the person executing the application shall be given.

(b) The application shall include the signature of the applicant in accordance with §295.14 of this title (relating to Signature of Applicant). Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

(c) The application shall state the location of point(s) of diversion and provide latitude and longitude coordinates in decimal degrees to six decimal places for each point.

(d) The total amount of marine seawater or seawater from a bay or arm of the Gulf of Mexico to be diverted and used shall be stated in definite terms, i.e., a definite number of acre-feet annually and the application shall state the maximum rate of diversion in gallons per minute or cubic feet per second for each diversion point.

(e) The application shall state each purpose of use in definite terms. If the application requests authorization to use marine seawater for multiple purposes, the application shall expressly state an annual amount of marine seawater to be used for the multiple purposes as well as for each purpose of use.

(f) The applicant shall provide evidence that the marine seawater or seawater diverted from a bay or arm of the Gulf of Mexico will be treated in accordance with applicable commission rules, based on the purpose for which the water is to be used, before it is used.

(g) The application must include a water conservation plan meeting the requirements contained in §297.208 of this title (relating to Consideration of Water Conservation).

(h) The application shall contain information describing how it addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan or, in the alternative, describe conditions that warrant a waiver of this requirement.

(i) The application must include a determination of the total dissolved solids concentration of the marine seawater or seawater at the water source based on monthly sampling and analysis, as described in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration), and provide the data collected to the commission.

(j) The application shall provide documentation that the applicant will take reasonable measures to minimize impingement and entrainment associated with the diversion of marine seawater or seawater as described in §297.209 of this title (relating to Impingement and Entrainment).

(k) The application shall include:

(1) documentation that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones identified by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) on the date that the application is submitted; or

(2) documentation of the results of consultation with the TPWD and the GLO regarding the point or points from which a facility the person proposes to construct may divert seawater.

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 24, 2020.

TRD-202001575
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 14, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 239-1806

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CHAPTER 297. WATER RIGHTS, SUBSTANTIVE

SUBCHAPTER K. DESALINATION, SUBSTANTIVE

30 TAC §297.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §297.202.

The amendment to §297.202 is adopted *with change* to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7130). The rule will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater if: 1) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or 2) the seawater contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter. As set out in Texas Water Code (TWC), §18.002(c), the legislation provided an alternative procedure for obtaining an authorization to divert marine seawater and did not affect the authority of a person to divert marine seawater from a bay or estuary under TWC, Chapter 11.

HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste result-

ing from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled Marine Seawater Desalination Diversion and Discharge Zones Study in September 2018 and developed a map depicting the diversion and discharge zones which is available on the GLO website in the Coastal Resources Management Viewer. The diversion zones created are applicable only to marine seawater. TPWD and GLO did not designate zones in bays or arms of the Gulf of Mexico where seawater could be diverted for industrial purposes.

This rulemaking implements the requirement in TWC, Chapter 18, for the commission to designate appropriate diversion zones by rule.

As part of this rulemaking, the commission adopts amendments to 30 TAC Chapter 295, Water Rights, Procedural; and 30 TAC Chapter 318, Marine Seawater Desalination Discharges, to designate appropriate diversion and discharge zones by rule.

Section Discussion

§297.202, Approval Criteria for Diversion of Marine Seawater and Seawater

The commission adopts the amendment to §297.202(5) which currently states that the commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if the applicant has provided documentation of the results of the consultation with the TPWD and the GLO (required by current §295.302). Adopted §297.202(5) states that the commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if the application includes documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones identified by the TPWD and the GLO on the date that the application is submitted; or documentation of the results of the consultation with the TPWD and the GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes. The commission changed the word "approved" to the word "identified" in §297.202(5)(A) to better reflect the actions taken by TPWD and GLO in developing the study and made a non-substantive typographic correction to §297.202(5)(B).

Final Regulatory Impact 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. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3), as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "{t}he purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The adopted amendment in Chapter 297 streamlines the process by authorizing documentation that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rule does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rule will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendment will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicable requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under specific state statutes enacted in HB 2031.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether the adopted rule constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rule is to add procedures for the development of plentiful and cost-effective

water supplies to meet the ever increasing demand for water and streamline the process for these permits. The adopted rule will substantially advance this stated purpose by authorizing documentation that the point(s) from which a facility the person proposes to construct for diversion of marine seawater are within the zones approved by the TPWD and the GLO on the date that the application is submitted or documentation of the results of the consultation with the TPWD and GLO regarding the point(s) from which a facility the person proposes to construct may divert seawater for industrial purposes.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rule because this rule does not impact private real property. In HB 2031, the legislature expressed that "{i}n this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or private real property rights that have been granted for uses of the water in the Gulf of Mexico. For seawater in a bay or arm of the Gulf of Mexico, few water rights have been granted for this water. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico or a bay or arm of the Gulf of Mexico. Diversions of seawater in a bay or arm of the Gulf of Mexico are also limited to industrial water and water for municipal and domestic needs cannot be taken from a bay or arm of the Gulf of Mexico under Chapter 295, Subchapter G.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rule include: Impoundments and diversion of state water within 200 stream miles of the coast.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies. The adopted rule is consistent with these CMP goals and policies because this rule does not create or have a direct or significant adverse effect on any CNRAs, and because the adopted rule requires diversion to be located in an approved diveresion zone in the Gulf of Mexico or consultation with the TPWD and GLO regarding the location of any diversion point in a bay or arm of the Gulf of Mexico.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission received no comments regarding the CMP.

Public Comment

The commission held a public hearing on December 17, 2019. The comment period closed on January 6, 2020. The commission received no comments.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013(a)(1) concerning the commission's general jurisdiction over water and water rights; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; and TWC, §11.1405, concerning desalination of seawater for use for industrial purposes.

The adopted amendment implements TWC, §11.1405 and §18.003 and House Bill 2031 passed by the 84th Texas Legislature, 2015.

§297.202. Approval Criteria for Diversion of Marine Seawater and Seawater.

The commission shall grant an application for a water right to divert marine seawater or seawater for desalination under this subchapter only if:

(1) the application conforms to the requirements prescribed by §295.302 of this title (relating to Requirements for Application for Diversion of Marine Seawater and Diversion of Seawater) and is accompanied by the prescribed fee;

(2) the point of diversion is located less than three miles seaward of any point located on the coast of this state; or the water contains a total dissolved solids concentration based on a yearly average of samples taken monthly at the water source of less than 20,000 milligrams per liter, in accordance with the requirements set out in §297.205 of this title (relating to Determination of Total Dissolved Solids Concentration);

(3) the diverted marine seawater or seawater is intended for a beneficial use and the marine seawater or seawater will be treated in accordance with applicable commission rules, based on the purpose for which the marine seawater or seawater is to be used, before it is used;

(4) the application is not detrimental to the public welfare;

(5) the applicant has provided documentation:

(A) that the point or points from which a facility the person proposes to construct for diversion of marine seawater are within the zones identified by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) on the date that the application is submitted; or

(B) of the results of consultation with the TPWD and the GLO regarding the location of a facility the person proposes to construct for diversion of seawater;

(6) the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan unless the commission determines that new, changed, or unaccounted for conditions warrant waiver of this requirement; and

(7) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by §297.1 of this title (relating to Definitions).

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 24, 2020.

TRD-202001578
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 14, 2020
Proposal publication date: November 22, 2019
For further information, please call: (512) 239-1806

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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572.

The amendments to §§305.2, 305.62, 305.69, 305.70, and 305.172 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6802) and, therefore, will not be republished. The amendments to §305.401 and §305.572 are adopted *with changes* to the proposed text and, therefore, will be republished

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 321, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendments to §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 remove obsolete text and update cross-references.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission adopts non-substantive changes, such as defining and using consistent terms and grammatical corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§305.2, Definitions

The commission adopts amended §305.2(15) to update the cross-reference from §39.7, which is concurrently adopted for repeal, to §39.407.

§305.62, Amendments

The commission adopts amended §305.62(c)(3) to update the cross-references from §50.45 and §39.151, which are concurrently adopted for repeal, to §50.145 and §39.551, respectively.

§305.69, Solid Waste Permit Modification at the Request of the Permittee

The commission adopts amended §305.69 to update cross-references to rules that are concurrently adopted for repeal. In §305.69(b)(1)(B), (c)(2) and (9), (d)(2), (f)(4), and (g)(1), the reference is updated from §39.13 to §39.413. In §305.69(c)(6) and (7), the reference is updated from §50.33 to §50.133. Additionally, in §305.69(d)(2)(A), the reference is updated from §39.11 to §39.411.

§305.70, Municipal Solid Waste Permit and Registration Modifications

The commission adopts amended §305.70(i) to restructure subsection (i) and update references for some requirements due to the adoption of the concurrent repeal of §39.106. The commission also adopts to remove a reference that the permittee or registrant must prepare a Notice of Application and Preliminary Decision. These changes are adopted to conform the section to current practice and for ease of understanding. In addition, the commission adopts amended §305.70(j) and (k) to replace the reference from §39.106, which is concurrently adopted for repeal, with references to §305.70(i).

§305.172, Determining Feasibility of Compliance and Adequate Operating Conditions

The commission adopts amended §305.172(6) to update the cross-reference from §39.13, which is concurrently adopted for repeal, to §39.413, and amended §305.172(11) to update the cross-reference from §50.33, which is concurrently adopted for repeal, to §50.133.

§305.401, Compliance Plan

The commission adopts amended §305.401 to remove references to obsolete text, which is concurrently adopted for repeal, and add references to current rules that apply to compliance plan applications.

At adoption, the commission amends §305.401 to conform references to Texas Register style requirements.

§305.572, Permit and Trial Burn Requirements

The commission adopts amended §305.572(b) to update the cross-reference from §39.13, which is concurrently adopted for repeal, to §39.413.

At adoption, the commission amends §305.401 to conform references to Texas Register style requirements.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references and removes obsolete language to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendments to §§305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Sections 305.2, 305.62, 305.69, 305.70, 305.172, 305.401, and 305.572 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §305.2

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

30 TAC §§305.62, 305.69, 305.70

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

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 I. HAZARDOUS WASTE INCINERATOR PERMITS

30 TAC §305.172

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

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SUBCHAPTER L. GROUNDWATER COMPLIANCE PLAN

30 TAC §305.401

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes

the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§305.401. Compliance Plan.

(a) In order to administer the groundwater protection requirements relating to compliance monitoring and corrective action for facilities that store, process, or dispose of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills, and the requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), the commission shall establish a compliance plan.

(b) The following rules pertaining to application, and notice and hearing shall be applicable in proceedings to establish the plan: §39.401 of this title (relating to Purpose); §39.403 of this title (relating to Applicability); §39.405 of this title (relating to General Notice Provisions); §39.407 of this title (relating to Mailing Lists); §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing); §39.411 of this title (relating to Text of Public Notice); §39.413 of this title (relating to Mailed Notice); §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit); §39.419 of this title (relating to Notice of Application and Preliminary Decision); §39.420 of this title (relating to Transmittal of the Executive Director's Response to Comments and Decision); §39.421 of this title (relating to Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application); §39.423 of this title (relating to Notice of Contested Case Hearing); §39.425 of this title (relating to Notice of Contested Enforcement Case Hearing); §39.503 of this title (relating to Application for Industrial or Hazardous Waste Facility Permit); §39.509 of this title (relating to Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit); §39.1005 of this title (relating to Notice of Class 1 Modification of an Industrial Solid Waste or Hazardous Waste Permit); §39.1007 of this title (relating to Notice of Class 2 Modification of an Industrial Solid Waste or Hazardous Waste Permit); §50.113 of this title (relating to Applicability and Action on Application); §50.115 of this title (relating to Scope of Contested Case Hearings); §50.117 of this title (relating to Commission Actions); §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing); §55.200 of this title (relating to Applicability); §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing); §55.203 of this title (relating to Determination of Affected Person); §55.205 of this title (relating to Request by Group or Association); §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing); §55.210 of this title (relating to Direct Referrals); §55.211 of this title (relating to Commission Action on Requests for Reconsideration and Contested Case Hearing); Chapter 281 of this title (relating to Applications Processing); §305.43 of this title (relating to Who Applies); §305.44 of this title (relating to Signatories to Applications); §305.47 of this title (relating to Retention of Application Data); §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order); §305.53 of this title (relating to Application Fee); §§305.122 - 305.124 of this title (relating to Characteristics of Permits; Reservation in Granting Permit; and Acceptance of Permit, Effect); and §305.128 of this title (relating to Signatories to Reports).

(c) Any investigation report to establish compliance monitoring or corrective action shall contain the information specified in the regulations contained in 40 Code of Federal Regulation (CFR) §270.14(c)(7) and (8), which are in effect as of September 9, 1987. The executive director may authorize, in writing, in advance the submittal of a proposed permit schedule for the submittal of an engineering feasibility plan as set forth in the regulations contained in 40 CFR §270.14(c)(7), which are in effect as of September 9, 1987. The executive director may also authorize, in writing, prior to the submittal of a complete permit application, the submittal of a schedule for the information required in the regulations contained in 40 CFR §270.14(c)(8)(iii) and (iv), as set forth in the regulations contained in 40 CFR §270.14(c)(8)(v), which are in effect as of September 9, 1987. The executive director may request information necessary to determine the appropriateness and extent of corrective action required by §335.167 of this title .

(d) The executive director shall prepare a draft compliance plan unless the executive director recommends not to approve the plan. The draft compliance plan shall be available for public review, and notice that the executive director has prepared such a plan will be given pursuant to §39.503 of this title . The draft compliance plan shall be filed with the commission to be included in its consideration of the approval of a compliance plan.

(e) The executive director shall prepare a technical summary which sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft compliance plan. The executive director shall send this summary together with the draft compliance plan to the applicant and, on request, to any other person. The summary shall include the following information, where applicable:

(1) a brief description of the type of facility or activity which is the subject of the draft compliance plan;

(2) the type and quantity of wastes, fluids, or pollutants which are being managed at the facility;

(3) a brief summary of the basis for the conditions of the draft compliance plan, including references to applicable statutory or regulatory provisions;

(4) a description of the procedures for reaching a final decision on the draft compliance plan, including procedures whereby the public may participate in the final decision; and

(5) the name and telephone number of a person in the commission to contact for additional information.

(f) The plan may be amended:

(1) when the corrective action program specified in the plan under §335.165 of this title (relating to Compliance Monitoring Program) has not brought the regulated unit into compliance with the groundwater protection standard within a reasonable time;

(2) when the plan requires a compliance monitoring program under §335.165 of this title, but monitoring data collected prior to permit issuance indicate that the facility is exceeding the groundwater protection standard. The sections of this chapter pertaining to major amendments shall be applicable to the foregoing amendments to the compliance plan.

(g) Whenever a facility is subject to permitting under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and is further required under §§335.156 - 335.167 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; and Corrective Action Program) to conduct compliance monitoring or corrective action, processing of the permit application for the facility and the establishment of the compliance plan shall be consolidated in one proceeding.

(h) Nothing herein shall be construed to be inconsistent with the commission's authority under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §8 and §8b.

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 Q. PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

30 TAC §305.572

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§305.572. Permit and Trial Burn Requirements.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 270 are adopted by reference, as amended and adopted in the CFR through August 1, 2005 (70 FedReg 44150) or as stated in paragraphs (1) - (5) of this subsection:

(1) 40 CFR §270.66(b) - Permit Operating Periods for New Boilers and Industrial Furnaces, except that any permit amendment or modification shall proceed according to the applicable requirements of Subchapter D of this chapter (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) 40 CFR §270.66(c) - Requirements for Trial Burn Plans;

(3) 40 CFR §270.66(d) - Trial Burn Procedures, except 40 CFR §270.66(d)(3), and except that all required submissions must be certified on behalf of the applicant by the signature of a person authorized pursuant to §305.44 of this title (relating to Signatories to Applications);

(4) 40 CFR §270.66(e) - Special Procedures for DRE Trial Burns; and

(5) 40 CFR §270.66(f) - Determinations Based on Trial Burn.

(6) 40 CFR §270.235 - Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions from startup, shutdown, and malfunction events as amended through October 12, 2005 (70 FedReg 59402).

(b) With regard to trial burn notice procedures, the chief clerk shall send notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.413 of this title (relating to Mailed Notice) announcing the scheduled commencement and completion dates for the trial burn. The notice shall meet the requirements of 40 CFR §270.66(d)(3)(i) and (ii) as amended through December 11, 1995 (60 FedReg 63417). The applicant may not commence the trial burn until after the chief clerk has issued such notice. This subsection applies to initial trial burns and all other trial burns except those that are to be conducted within 180 days after permit modification covering the trial burn.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 318. MARINE SEAWATER DESALINATION DISCHARGES
SUBCHAPTER A. GENERAL REQUIREMENTS FOR MARINE SEAWATER DESALINATION DISCHARGES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §318.9 and new §318.9.

The repeal of §318.9 is adopted *without change* to the proposal as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7133) and, therefore will not be republished. New §318.9 is adopted *with change* to the proposed text as pub-

lished in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7133) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

In 2015, the 84th Texas Legislature passed House Bill (HB) 2031. HB 2031 relates to the diversion, treatment, and use of marine seawater and the discharge of treated marine seawater and waste resulting from the desalination of marine seawater. In HB 2031, the legislature created new Texas Water Code (TWC), Chapter 18, to address marine seawater desalination projects.

Additionally, HB 2031 required the Texas Parks & Wildlife Department (TPWD) and the Texas General Land Office (GLO) to conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination process. The commission must adopt rules designating diversion and discharge zones by September 1, 2020. Until such time as the commission adopts rules designating diversion and discharge zones, an applicant for a permit to divert marine seawater or discharge waste resulting from the desalination process must consult with the TPWD and the GLO regarding the point(s) of diversion and discharge.

TPWD and GLO completed their study entitled *Marine Seawater Desalination Diversion and Discharge Zones Study* in September 2018 (TPWD/GLO study) and developed a map depicting the diversion and discharge zones which is available on the GLO website on the *Coastal Resource Management Viewer* (CRM Viewer).

This rulemaking implements the requirement in TWC, Chapter 18, for the commission to designate appropriate discharge zones by rule.

As part of this rulemaking, the commission adopts the amendments to 30 TAC Chapter 295, Water Rights, Procedural; and, 30 TAC Chapter 297, Water Rights, Substantive, to designate appropriate diversion zones by rule.

Section by Section Discussion

§318.9, Discharge Zones for Near-Shore and Off-Shore Discharges

The commission adopts the repeal of §318.9, which requires applicants for near-shore and off-shore discharges from marine seawater desalination facilities to consult with TPWD and GLO regarding the discharge location which is required by TWC, §18.005(h) until the commission adopts rules under TWC, §18.005(g) designating discharge zones.

The commission adopts a new §318.9(a), which requires marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone identified in the TPWD/GLO study and depicted in the CRM Viewer. The commission clarified that the near-shore and off-shore discharges referenced in this subsection are those that are authorized under the expedited procedures in Chapter 318. The commission also changed the word "recommended" to the word "identified" in §318.9(a) to better reflect the actions taken by TPWD and GLO in developing the study.

The commission adopts a new §318.9(b), which clarifies that discharges of wastewater resulting from the desalination of marine seawater may be located outside of the TPWD / GLO identified discharge zones when authorized under the requirement of 30 TAC Chapter 305 and TWC, Chapter 26.

Final Regulatory Impact 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. Texas Government Code, §2001.0225, applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with specific intent to "protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. HB 2031 required TPWD and GLO to jointly conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater and the discharge of waste resulting from the desalination of marine seawater. TPWD and GLO were required to submit a report on the results of the study to the commission, and the commission by rule is required to designate appropriate diversion zones and discharge zones. The stated purpose of HB 2031 is to "streamline the regulatory process for and reduce the time required for and cost of marine seawater desalination." HB 2031 further states that "{t}he purpose of this Act is not to hinder efforts to conserve or develop other surface water supplies but rather to more fully explore and expedite the development of all of this state's water resources in order to balance this state's supply and demand for water, which is one of the most precious resources of this state." Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure, but instead to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and to streamline the process for these permits. The adopted rulemaking streamlines the process by authorizing marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone identified in the TPWD/GLO study and depicted in the CRM Viewer.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rulemaking will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

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

ers of the agency instead of under specific law." This rulemaking is not governed by federal law, does not exceed state law, does not come under a delegation agreement or contract with a federal program, and is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under specific state statutes enacted in HB 2031.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether this adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to add procedures for the development of plentiful and cost-effective water supplies to meet the ever increasing demand for water and streamline the process for these permits. The adopted rulemaking will substantially advance this stated purpose by requiring marine seawater desalination facilities for near-shore and off-shore discharges to locate their outfalls within a discharge zone identified in the TPWD/GLO study and depicted in the CRM Viewer

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this adopted rulemaking because these rules do not impact private real property. In HB 2031, the legislature expressed that "{i}n this state, marine seawater is a potential new source of water for drinking and other beneficial uses. This state has access to vast quantities of marine seawater from the Gulf of Mexico." For marine seawater, there are no permanent water rights or real property rights that have been granted for use of the water in the Gulf of Mexico. There is no potential for harm to other water rights by this rulemaking. The burden on private real property rights will be nonexistent to minimal because of the amount of water in the Gulf of Mexico.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rulemaking in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and, 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rulemaking includes: discharges must comply with water quality-based effluent limits; discharges that increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development; and to the greatest extent practicable, new wastewater outfalls must be located where they will not adversely affect critical areas.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies. The adopted rulemaking is consistent with these CMP goals and policies because this rulemaking does not create or have a direct or significant adverse effect on any CNRAs, and because the adopted rulemaking does not allow a discharge from marine seawater desalination projects into or adjacent to water in the state, except in accordance with an individual permit issued by the commission. Individual permits issued under this adopted rulemaking will include effluent limitations to ensure compliance with water quality standards. The adopted rulemaking requires wastewater discharges to be located in an approved discharge zone in the Gulf of Mexico.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission received no comments regarding the CMP.

Public Comment

The commission held a public hearing on December 17, 2019. The comment period closed on January 6, 2020. The commission received no comments.

30 TAC §318.9

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013 concerning the commission's general jurisdiction; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103, concerning the adoption of rules by the commission; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; TWC, §26.011, concerning the commission's general authority to adopt rules for waste discharge or impending waste discharges under TWC, Chapter 26; TWC, §26.027, concerning the commission's authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.041, concerning the commission's authority to prevent a discharge of waste that is injurious to public health.

The adopted repeal implements TWC, §18.005 and House Bill (HB) 2031 passed by the 84th Texas Legislature, 2015.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-1806

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30 TAC §318.9

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.013, concerning the commission's general jurisdiction; TWC, §5.102, concerning the general powers of the commission; TWC, §5.103 concerning the adoption of rules by the commis-

sion; TWC, §5.105, concerning the commission's approval of general policy; TWC, Chapter 18, concerning marine seawater desalination projects; TWC, §26.011, concerning the commission's general authority to adopt rules for waste discharge or impending waste discharges under TWC, Chapter 26; TWC, §26.027, concerning the commission's authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.041, concerning the commission's authority to prevent a discharge of waste that is injurious to public health.

The adopted new section implements TWC, §18.005, and House Bill 2031 passed by the 84th Texas Legislature, 2015.

§318.9. Discharge Zones for Near-Shore and Off-Shore Discharges.

(a) For near-shore discharges or off-shore discharges that are authorized under the expedited procedures in this chapter, the point at which a facility may discharge wastewater resulting from the desalination of marine seawater must be located in a discharge zone identified and depicted by the Texas Parks and Wildlife Department (TPWD) and the Texas General Land Office (GLO) pursuant to Marine Seawater Desalination Diversion and Discharge Zones Study (September 2018) as amended, available on the TPWD website, and as depicted on the Coastal Resources Management Viewer, on the GLO website.

(b) Discharges of wastewater resulting from the desalination of marine seawater that are not located in a discharge zone must be authorized under the requirements in Chapter 305 of this title (relating to Consolidated Permits) and Texas Water Code, Chapter 26.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§321.97, 321.212, and 321.253.

The amendments to §321.97 and §321.253 are adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6822) and, therefore, will not be republished. The amendment to §321.212 is adopted *with change* to the proposed text and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 330 - 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The commission adopts amendments to §§321.97, 321.212, and 321.253 to update cross-references.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

The commission adopts non-substantive changes, such as grammatical corrections. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§321.97, Motion for Reconsideration

The commission adopts amended §321.97 to update the title of the section and the cross-reference from §50.39(b) - (f), which is concurrently adopted for repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

§321.212, Purpose and Applicability

The commission adopts amended §321.212(a) to update the cross-reference from Chapter 50, Subchapter C, which is concurrently adopted for repeal, to Chapter 50, Subchapter G.

At adoption, the commission amends §321.212 to conform references to Texas Register style requirements.

§321.253, Purpose and Applicability

The commission adopts amended §321.253(a) to update the cross-reference from Chapter 50, Subchapter C, which is concurrently adopted for repeal, to Chapter 50, Subchapter G.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

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

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

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

Consistency with the Coastal Management Program

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

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Sections 321.97, 321.212, and 321.253 are not applicable requirements under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

SUBCHAPTER F. SHRIMP INDUSTRY

30 TAC §321.97

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

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 L. DISCHARGES TO SURFACE WATERS FROM MOTOR VEHICLES CLEANING FACILITIES

30 TAC §321.212

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

§321.212. Purpose and Applicability.

(a) The purpose of this subchapter is to regulate by rule the surface discharge to water in the state of facility wastewater from motor vehicles cleaning facilities in accordance with the effluent limitations, monitoring requirements, and other conditions set forth herein. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter G of this title (relating to Action by the Executive Director). Except as provided by §321.219 of this title (relating to Enforcement and Revocation) and except as provided by subsection (e) of this section, this rule regulates the following type of facilities which in a given month discharge, on average, more than 5,000 gallons per day of operation:

(1) Establishments primarily engaged in washing, waxing, and polishing motor vehicles. These type of facilities are classified as Standard Industrial Classification code 7542.

(2) Companies, governmental entities, taxi companies, parcel delivery companies, or similar entities that have their own motor vehicle cleaning facilities.

(3) This subchapter only applies to the discharge of wastewater generated from washing the exterior of vehicles.

(4) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed are used for any of the following:

(A) transportation of municipal or industrial solid waste, including hazardous waste;

(B) transportation of hazardous materials or vehicles subject to placarding or labeling because of such transportation;

(C) exploration, production, or development of oil, natural gas, or geothermal resources.

(5) This subchapter does not apply to establishments, companies, or entities engaged in motor vehicle washing when the vehicles being washed consist of the following types:

(A) semi-tractor trailer vehicles or similar carriers involved in transportation activities described in paragraph (4)(A) and (B) of this subsection.

(B) vehicles, trucks, or other equipment involved in transportation which, in the judgement of the executive director, has the potential to release toxic substances when the equipment's exterior is washed.

(b) Discharges are allowable under this subchapter only by those registrants of facilities which have a certificate of registration issued by the executive director under §321.213 of this title (relating to Certificate of Registration and Public Notice), §321.215 of this title (relating to General Requirements for Discharge), and §321.216 of this title (relating to Specific Requirements for Discharge). For new facilities, a certificate of registration issued by the executive director under §§321.213, 321.215, and 321.216 of this title shall be obtained prior to discharge of wastewater from the subject facility.

(c) Facilities which do not meet the requirements of §321.215 and §321.216 of this title and do not discharge or transport facility wastewater to a publicly owned treatment works (POTW) which has a wastewater discharge permit issued by the agency must apply for an emergency order, temporary order, or permit as provided by Chapter 305, Subchapter B of this title (relating to Emergency Orders, Temporary Orders, and Executive Director Authorizations) for the discharge of wastewater into or adjacent to water in the state.

(d) If the executive director denies a registration application under this subchapter, the facility must obtain a permit pursuant to the Texas Water Code, Chapter 26.

(e) No motor vehicle cleaning facility may obtain registration under this subchapter, if it is located within the service area of a POTW or within a similar service area which provides for the collection and disposal of wastewater. No self-service or coin-operated motor vehicle cleaning facility may obtain registration under this chapter. Such facilities must either discharge facility wastewater into the POTW, obtain authorization by individual permit issued pursuant to Chapter 305 of this title (relating to Consolidated Permits), or otherwise dispose of wastewater in a manner which complies with commission regulations.

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 N. HANDLING OF WASTES FROM COMMERCIAL FACILITIES ENGAGED IN LIVESTOCK TRAILER CLEANING

30 TAC §321.253

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt

any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; and TWC, §§5.013, 5.102, 5.103, 5.122, and 26.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§330.57, 330.69, and 330.411.

The amendment to §330.411 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6825) and, therefore, will not be republished. The amendments to §330.57 and §330.69 are adopted *with changes* to the proposed text and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 331, 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendments to §§330.57, 330.69, and 330.411 replace obsolete text and update cross-references.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section by Section Discussion

§330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission adopts amended §330.57(i)(3)(C) to update the reference to the commission's Office of Public Assistance to the Public Education Program.

At adoption, the commission amends §330.57 to conform references to Texas Register style requirements.

§330.69, Public Notice for Registrations

The commission adopts amended §330.69(b) to update the cross-reference from §39.501(e)(3) and (4) to §39.501(e)(5) and (6). The commission also adopts amended §330.69(b) to remove obsolete text regarding the applicability of the section for registrations filed before amendments to Chapter 330 were adopted in 2006.

At adoption, the commission amends §330.69 to conform references to Texas Register style requirements.

§330.411, Assessment of Corrective Measures

The commission adopts amended §330.411(d) to update the cross-reference from §39.501(e)(3) to §39.501(e)(5).

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§330.57, 330.69, and 330.411 are procedural in nature and are not specifically intended to protect the envi-

ronment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendments to§§330.57, 330.69, and 330.411 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §330.57, §330.69

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amended sections are also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit), and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners.

Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in four copies. The owner or operator shall furnish up to 18 additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Professional Geoscientist Seals and Geoscience Firm Identification).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Applications shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Dividers and tabs are encouraged.

(h) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(i) Posting application information.

(1) Upon submittal of an application, the owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its website the identity of all owners and operators filing such applications and the Web address link required by this subsection.

(3) For applications for new permits or major amendments, an owner or operator shall post notice signs at the site within 30 days of the executive director's receipt of an application. This sign posting is for informational purposes only. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) identify as appropriate that the application is for a proposed permitted facility or an amendment to a permitted facility;

(C) include the words "For further information on how the public may participate in Texas Commission on Environmental Quality (TCEQ) permitting matters, contact TCEQ," the toll free telephone number for the Public Education Program, and the agency's website address;

(D) include the name and address of the owner or operator;

(E) include the telephone number of the owner or operator; and

(F) remain in place and legible until the close of the final comment period.

(4) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line parallel to a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(5) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(6) The executive director may approve variances from the requirements of paragraphs (3), (4), and (5) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this subsection.

§330.69. Public Notice for Registrations.

(a) Notice to local governments. For mobile liquid waste processing unit registration applications only, upon filing a registration application, the owner or operator shall mail notice to the city, county, and local health department of any local government in which operations will be conducted notifying local governments that an application has been filed. Proof of mailing shall be provided to the executive director in the form of return receipts for registered mail. Mobile liquid waste processing unit registration applications are not subject to public meeting or sign-posting requirements under subsection (b) of this section.

(b) Opportunity for public meeting and posting notice signs. The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site. The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings) or by Texas Health and Safety Code, §361.111(c). Notice of a public meeting shall be provided as specified in §39.501(e)(5) and (6) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. Applications for registrations filed after the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) become effective are subject to the 2006 Revisions requirements to provide notice of the opportunity to request a public meeting. The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001, Administrative Procedure Act. At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements.

(1) Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MUNICIPAL SOLID WASTE FACILITY";

(C) include the words "REGISTRATION NO.," the number of the registration, and the type of registration;

(D) include the words "for further information contact";

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(2) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(3) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met.

(4) The executive director may approve variances from the requirements of paragraphs (1) and (2) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(c) Notice of final determination. 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. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), 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 under §50.139 of this title (relating to Motion to Overturn 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 land ownership map and landowners list required by §330.59 of this title (relating to Contents of Part I of the Application), and to other persons who timely filed public comment in response to public notice.

(d) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in public notices given under Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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SUBCHAPTER J. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §330.411

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapters L and M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER L. GENERAL PERMIT AUTHORIZING USE OF A CLASS I INJECTION WELL TO INJECT NONHAZARDOUS DESALINATION CONCENTRATE OR NONHAZARDOUS DRINKING WATER TREATMENT RESIDUALS

30 TAC §331.202

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §331.202.

The amendment to §331.202 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6831). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330, 332, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §331.202 updates cross-references.

The commission adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§331.202, Public Notice, Public Meetings, and Public Comment

The commission adopts amended §331.202(c)(1) and (d)(4) to update the cross-references from §39.11, which is concurrently adopted for repeal, to §39.411.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §331.202 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates cross-references to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §331.202 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §331.202 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section §331.202 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, and 27.019; and THSC, §361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 332. COMPOSTING
SUBCHAPTER C. OPERATIONS REQUIRING A REGISTRATION

30 TAC §332.35

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §332.35.

The amendment to §332.35 is adopted *without changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6834). The rule will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission is concurrently adopting amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330, 331, 334, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §332.35 updates an obsolete cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§332.35, Registration Application Processing

The commission adopts amended §332.35(e) to update the cross-reference from §50.39, which is concurrently adopted for repeal, to §50.139 (Motion to Overturn Executive Director's Decision). Additionally, the commission adopts amended §332.35(e) to improve readability.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §332.35 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §332.35 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §332.35 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 332.35 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
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CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS SUBCHAPTER K. STORAGE, TREATMENT, AND REUSE PROCEDURES FOR PETROLEUM-SUBSTANCE CONTAMINATED SOIL

30 TAC §334.484

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §334.484.

The amendment to §334.484 is adopted *without change* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6837) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999 and thus subject to these rules remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments to 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 335, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses

public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications would be relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §334.484 updates an obsolete cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§334.484. Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities

The commission adopts amended §334.484(h) to update the cross-reference from §50.39, which is concurrently adopted for repeal, to §50.139 (Motion to Overturn Executive Director's Decision). Additionally, the commission adopts amended §334.484(h) to improve readability.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §334.484 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §334.484 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §334.484 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 334.484 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; TWC, §26.345, which authorizes the commission to adopt rules necessary to develop a regulatory program for underground and aboveground storage tanks; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, 26.345; and TWC, Chapter 26, Subchapter I.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

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

30 TAC §335.21

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §335.21.

The amendment to §335.21 is adopted *with changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6840). The rule will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, and 350, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §335.21 updates an obsolete cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

§335.21, Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations

The commission adopts amended §335.21(3) to update the cross-reference from §50.39, which is concurrently adopted for repeal, to §50.139 (Motion to Overturn Executive Director's Decision). Additionally, the commission adopts amended §335.21(3) to improve readability.

At adoption, the commission amends §335.21 to conform references to Texas Register style requirements.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §335.21 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the

general authority of the commission. The adopted amendment to §335.21 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §335.21 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 335.21 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §361.024.

§335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations.

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed flame combustion devices as boilers, and applications for non-waste determinations:

(1) the owner or operator must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or §335.20 of this title (relating to Variance To Be Classified as a Boiler);

(2) the owner or operator must apply to the executive director for the non-waste determination. The application must address the relevant criteria referenced in §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations);

(3) the executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public meeting upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the public meeting (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion to overturn, in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's Decision);

(4) in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in §§335.19, 335.20, or 335.32 of this title, upon which a variance or non-waste determination has been based, the applicant must send a written description of the change in circumstances to the executive director. The executive director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination;

(5) variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, owners or operators of facilities must re-apply for a variance or non-waste determination. If an owner or operator of a facility re-applies for a variance or non-waste determination within six months, the owner or operator of the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the executive director; and

(6) owners or operators of facilities receiving a variance or non-waste determination must provide notification as required by §335.26 of this title (relating to Notification Requirements for Hazardous Secondary Materials).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 350. TEXAS RISK REDUCTION PROGRAM

SUBCHAPTER D. DEVELOPMENT OF PROTECTIVE CONCENTRATION LEVELS

30 TAC §350.74

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §350.74.

The amendment to §350.74 is adopted *with changes* to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6842). The rule will be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The adopted rulemaking is intended to update one of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements.

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting for certain permit applications declared administratively complete on or after September 1, 1999. The rulemaking to implement HB 801 (and other bills) consolidated the public participation rules across the agency and those rules have subsequently been amended to implement legislation and policy decisions of the commission. The commission necessarily retained procedural rules applicable to certain permit applications declared administratively complete before September 1, 1999, and to other actions of the commission.

On June 12, 2019, the commission determined that the rules in 30 TAC Chapter 39, Subchapters A - E; Chapter 50, Subchapters A - C; Chapter 55, Subchapters A and B; and Chapter 80, §§80.3, 80.5, and 80.251 are obsolete and no longer needed because no applications that were declared administratively complete before September 1, 1999, and thus subject to these rules, remain pending with the commission (June 28, 2019, issue of the *Texas Register* (44 TexReg 3304)). As a result, the commission adopts, in a concurrent rulemaking, the repeal of obsolete rules in Chapters 39, 50, 55, and 80 (Rule Project Number 2019-119-039-LS) which then necessitates updating other rules, primarily to remove obsolete text and update cross-references.

As part of this rulemaking, the commission concurrently adopts amendments in 30 TAC Chapters 33, 35, 39, 50, 55, 60, 70, 80, 90, 205, 285, 294, 305, 321, 330 - 332, 334, and 335, and new sections in Chapter 39, to make necessary changes due to the adopted repeals. In addition, this rulemaking addresses public notice requirements for certain applications that are not subject to contested case hearing but are currently subject to rules in Chapter 39, Subchapters A and B, without regard to the specified date of administrative completeness. The public notice requirements for those applications are relocated to adopted new Chapter 39, Subchapter P. The adopted amendment to §350.74 updates a cross-reference.

The commission also adopts, in a concurrent rulemaking, amendments to 30 TAC Chapters 39, 55, 101, and 116 to make necessary changes due to the adopted repeals for which revisions to the State Implementation Plan are also necessary (Rule Project Number 2019-120-039-LS).

The public's opportunity to participate in the permitting process will not change nor be affected in any way as a result of these rulemaking projects.

Section Discussion

The commission adopts non-substantive changes, such as defining acronyms. Since these changes are non-substantive, the changes are not specifically discussed in this preamble.

§350.74, Development of Risk-Based Exposure Limits

The commission adopts amended §350.74(j)(2)(K) to update the cross-reference from §50.39, which is concurrently adopted for repeal, to §50.139 (Motion to Overturn Executive Director's Decision).

At adoption, the commission amends §350.74 to conform references to Texas Register style requirements.

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendment to §350.74 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking updates a cross-reference to ensure there is no confusion regarding the applicable rules for public participation for certain permit applications.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement

a state and federal program; or adopt a rule solely under the general authority of the commission. The adopted amendment to §350.74 does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §350.74 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted amendment does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Section 350.74 is not an applicable requirement under 30 TAC Chapter 122 (Federal Operating Permits Program) and, therefore, no effect on sites subject to the Federal Operating Permits Program is expected.

Public Comment

The commission offered a public hearing on December 10, 2019. The comment period closed on December 16, 2019. No comments were received on the rulemaking.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), Chapter 5, Subchapter M; TWC, §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director; TWC, §26.011, which authorizes the commission to maintain the quality of water in the state of Texas; and TWC, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.011, which provides the commission's authority to manage solid waste; THSC, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024 which authorizes the commission to adopt rules regarding the management and control of solid waste; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules.

The rulemaking implements TWC, Chapter 5, Subchapter M; TWC, §§5.013, 5.102, 5.103, 5.122, 26.011, and 27.019; and THSC, §361.024.

§350.74. Development of Risk-Based Exposure Limits.

(a) General requirement. The person shall use the criteria provided in subsections (b) - (j) of this section and the risk-based exposure limit (RBEL) equations provided in the following figures, as applicable, to establish RBELs appropriate for the type of chemical of concern (COC), the complete and reasonably anticipated to be completed exposure pathways, receptors, and land uses. The person shall establish RBELs for carcinogenic COCs and noncarcinogenic COCs using the default exposure factors provided in the following figure for residents and commercial/industrial workers, unless the executive director approves the use of alternate exposure factors in accordance with subsection (j) of this section.

Figure: 30 TAC §350.74(a) (No change.)

(b) Air inhalation RBEL. The air inhalation RBEL ($^{Air}RBEL_{Inh}$) is the protective concentration of a COC in air at the point of exposure (POE) for human inhalation.

(1) Under Tiers 2 and 3 as described in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation), the person may use the lower of available eight-hour time-weighted average occupational inhalation criteria (i.e., Occupational Safety and Health Administration Permissible Exposure Limits, or American Conference of Governmental Industrial Hygienists Threshold Limit Values), as $^{Air}RBEL_{Inh}$ for inhalation pathways for commercial/industrial workers within the limits of affected commercial/industrial properties which have a health and safety plan in place. The health and safety plan shall be designed to ensure compliance with the applicable occupational inhalation criteria and require the monitoring of COC levels in the working air environment, and specify actions that will be taken in the event of exceedance of the occupational inhalation criteria. When occupational inhalation criteria are used, the person shall provide documentation of the health and safety plan, certify that the plan is followed, and demonstrate that the off-site receptors are protected as required by §350.71(h) of this title (relating to General Requirements). The use of occupational inhalation criteria as RBELs shall require the person to comply with the institutional control requirements in §350.111(b) and (b)(14) of this title (relating to Use of Institutional Controls).

(2) The air RBELs may not exceed any other applicable federal or state air quality standards.

(c) Soil dermal contact RBEL. The soil dermal contact RBEL ($^{Soil}RBEL_{Derm}$) is the protective concentration of a COC at the POE in soil based upon direct dermal contact to soil by humans. The soil dermal contact RBEL shall also be based on COC-specific values for dermal absorption fraction (ABS.d) and gastrointestinal absorption fraction (ABS_{GI}) provided in the following figure, unless the executive director approves the use of alternate ABS.d and ABS_{GI} values in accor-

dance with subsection (j)(1)(A) and (B) of this section. It is not necessary to calculate a soil dermal contact RBEL for COCs with vapor pressure in mm of Hg greater than or equal to 1.
Figure: 30 TAC §350.74(c) (No change.)

(d) Soil ingestion RBEL. The soil ingestion RBEL ($^{Soil}RBEL_{Ing}$) is protective concentration of a COC at the POE in soil based upon human ingestion.

(e) Vegetable ingestion RBELs. The vegetable RBELs ($^{AbgVeg}RBEL_{Ing}$ and $^{BgVeg}RBEL_{Ing}$) are the protective concentration of a COC in aboveground vegetables and below-ground vegetables, respectively, for ingestion by residents. The person shall establish RBELs for ingestion of aboveground vegetables for all carcinogenic and noncarcinogenic COCs which are metals. In addition, the person shall establish RBELs for ingestion of below-ground vegetables for all carcinogenic and noncarcinogenic COCs with a dimensionless Henry's Law Constant less than 0.03, as shown in the figure in §350.73(f) of this title (relating to Determination and Use of Human Toxicity Factors and Chemical Properties), when either of the following criteria are met:

(1) the COC is a metal; or

(2) the COC has a logarithmic octanol-water partition coefficient (Log K_{ow}) greater than four as shown in the figure in §350.73(f) of this title ; or

(f) Groundwater ingestion RBEL.

(1) The groundwater ingestion RBEL ($^{GW}RBEL_{Ing}$) is the protective concentration of a COC at the POE in groundwater based upon human ingestion of groundwater. However, if available, the person shall use the lower of the two values established under paragraphs (2) and (3) of this subsection instead.

(2) The person shall use the primary maximum contaminant level (MCL) as provided in 40 Code of Federal Regulations (CFR) Part 141, as amended, or the most currently available federal action level for drinking water (e.g., lead and copper) as the RBEL when available for the COC.

(3) The person shall use the secondary MCLs established for individual COCs as provided in 40 CFR Part 143, as amended, as RBELs, or other scientifically valid published criteria in cases where COCs are present at concentrations which present objectionable characteristics such as taste or odor (e.g., methyl tertiary butyl ether) under the following circumstances:

(A) when the COCs are present in class 1 groundwater;

(B) when the COCs are present in class 2 groundwater that is within 1/2 mile of a well used to supply drinking water and is also within or is likely to migrate, based upon the chemical properties of the COCs and the hydrogeology, to the groundwater production zone of such drinking water supply well; or

(C) when the COCs are present in class 2 groundwater and there are no alternative water supplies available.

(g) Class 3 groundwater RBEL. The class 3 groundwater RBEL ($^{GW}RBEL_{Class\ 3}$) is the acceptable concentration of a COC at the POE in class 3 groundwater.

(h) Surface water RBEL. The surface water RBEL (^{SW} RBEL) is the protective concentration of a COC at the POE in surface water. To establish ^{SW} RBEL for a COC, the person shall determine the lowest value from paragraphs (1) - (5) of this subsection for each COC, unless the person has sufficient surface water quality information specific to the particular surface water body to support an adjustment to the RBEL in accordance with paragraph (6) of this subsection. The ^{SW} RBEL value determined pursuant to paragraphs (1) - (6) of this subsection may require modification in response to the requirements of paragraphs (7) and (8) of this subsection. The^{SW} RBEL value for a given COC shall be protective of relevant downgradient water bodies in consideration of the water body use (e.g., designated drinking water supply or sustainable fishery), the water body type (e.g., estuary or perennial freshwater stream), the standards applicable to the type of water body/use, and the fate and transport characteristics of the COC in question at the particular affected property.

(1) The person shall apply the lower of the acute or chronic criteria for fresh or marine waters as applicable, based on the classification of the surface water, to protect aquatic life as provided in §307.6, Table 1 of this title (relating to Toxic Materials), as amended. The person shall determine the applicability of aquatic life criteria related to the water body aquatic life use and flow conditions in accordance with the procedures contained in §§307.3, 307.4, and 307.6 of this title (relating to Definitions and Abbreviations; General Criteria; and Toxic Materials, respectively), and the agency's *Implementation Procedures,* as amended, as defined in §350.4 of this title (relating to Definitions and Acronyms), as amended. For fresh waters, the person shall calculate aquatic life criteria for metals with hardness-dependent criteria using the hardness value for the nearest downstream classified segment, as listed in the agency's *Implementation Procedures,* as amended. Where no value is provided in the *Implementation Procedures,* a hardness value of 50 mg/l $CaCO_3$ shall be used. When applicable, the person shall convert total metal concentrations in surface water or groundwater to dissolved concentrations as described in the agency's *Implementation Procedures,* as amended. The person may use the basin-specific pH values provided in §307.6, Table 2 of this title, as amended, relevant to the particular affected property for purposes of determining the appropriate values for the pH dependent criteria. The person shall use the total suspended solids concentration for the nearest classified segment, as listed in the agency's *Implementation Procedures,* as amended.

(2) The person shall apply the human health criteria to protect drinking water and fisheries as provided in Table 3 of §307.6 of this title, as amended. When applicable, the person shall convert total metal concentrations in surface water or groundwater to dissolved concentrations as described in the agency's *Implementation Procedures,* as amended. The person shall determine the applicability of human health criteria according to the water body uses (e.g., public water supply, sustainable fishery, incidental fishery, and contact recreation) in accordance with the procedures contained in §307.3 and §307.6 of this title, as amended, and the *Implementation Procedures,* as amended. When a water body is not being evaluated as a drinking water source, the person must determine the necessity to evaluate exposure pathways associated with contact recreation such as incidental ingestion of surface water and dermal contact with surface water. The person shall use the total suspended solids concentration for the nearest classified segment, as listed in the agency's *Implementation Procedures,* as amended.

(3) The person shall apply the effluent limitations specified in Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG830000, as amended, for any release of groundwater or storm water that has been impacted by petroleum fuel (as defined in the general permit).

(4) The person shall apply United States Environmental Protection Agency guidelines or alternate provisions in accordance with §307.6(c)(7) of this title, as amended, when criteria for aquatic life protection are not provided for a COC in §307.6 of this title, Table 1, as amended. In addition, the person shall apply federal guidance criteria (i.e., lower of a federal numerical criterion, MCL, or equivalent state drinking water guideline) or alternate provisions in accordance with §307.6(d)(8) of this title, as amended, when human

health criteria for a COC are not provided in Table 3 of §307.6 of this title, as amended.

(5) The person shall apply the numerical criteria, as appropriate, for chlorides, sulfates, total dissolved solids, and pH for classified segments as specified in §307.10(1) of this title (relating to Appendices A - G), as amended.

(6) The person may apply additional provisions where data on surface water quality for a specific surface water body at the affected property is available or can be reasonably obtained.

(A) The person may determine property-specific hardness, based on sampling data, for calculating metals criteria in accordance with the procedures contained in the agency's *Implementation Procedures,* as amended.

(B) The person may determine property-specific total suspended solids, based on sampling data, for estimating "dissolved" metals in accordance with the *Implementation Procedures,* as amended.

(C) The person may determine the actual pH of the particular surface water body at the affected property.

(7) The additional numeric and narrative criteria listed in subparagraphs (A) and (B) of this paragraph may require development of a surface water RBEL (e.g., where a nutrient is a COC) or modification to the surface water RBEL (e.g., lower a RBEL value to minimize foaming on the water's surface) determined pursuant to paragraphs (1) - (5) of this subsection.

(A) General criteria related to aesthetic parameters, nutrient parameters, and salinity in accordance with §307.4(b), (e), and (g) of this title , as amended.

(B) General provisions related to the preclusion of adverse toxic effects on aquatic and terrestrial life, livestock, or domestic animals in accordance with §307.6(b) of this title, as amended.

(8) If the executive director determines that the release has the potential to lower the surface water dissolved oxygen, then the executive director may require the person to apply the dissolved oxygen criteria for classified segments specified in §307.10(1) of this title, as amended, or the dissolved oxygen criteria for unclassified waters specified in §307.10(4) of this title, as amended, §307.4(h) of this title, as amended, and §307.7(b)(3)(A) of this title (relating to Site Specific Uses and Criteria), as amended.

(i) Aesthetics. For COCs for which a RBEL cannot be calculated by the procedures of this section, or the RBEL concentration for the COC otherwise adversely impacts environmental quality or public welfare and safety, presents objectionable characteristics (e.g., taste, odor), or makes a natural resource unfit for use, the person shall comply with paragraphs (1) - (3) of this subsection as appropriate. For response actions which are triggered for an area solely for purposes of this subsection (i.e., there is no other human health or ecological hazard remaining), the executive director will evaluate the seriousness, probable longevity of the matter, and suitability of the proposed remedy with the landowner in order to site-specifically determine whether or not institutional controls and financial assurance are warranted. The person shall provide all information reasonably necessary to support such a determination to the executive director. The default presumption is that financial assurance and institutional controls are required for exposure prevention remedies. If the executive director determines that institutional controls and financial assurance are not warranted, then persons shall not be required to comply with the provisions of §§350.31(g), 350.33(e)(2)(C) and 350.111(b)(3) or (6) of this title (relating to General Requirements for Remedy Standards; Remedy Standard B; and Use of Institutional Controls), specifically relating to the physical control matters for the portion of affected property with the aesthetics issue.

(1) In accordance with §101.4 of this title (relating to Nuisance), as amended, the person may be required by the executive director to address COCs which present objectionable odors.

(2) The maximum total soil concentration of COCs which are liquid at standard temperature and pressure shall not exceed 10,000 mg/kg within the soil interval of 0 - 10 feet, unless it can be demonstrated that:

(A) no free liquids (e.g., no mobile NAPL) or sludges exist; or

(B) higher concentrations do not adversely impair surface use of the affected property.

(3) Other scientifically valid published criteria such as, but not limited to, non-COC specific secondary MCLs for water may be required by the executive director to be used as the RBEL.

(j) Requirements for variance to default RBEL exposure factors.

(1) Under Tiers 2 or 3 as provided in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation) and with prior executive director approval, the person may vary the following default exposure factors shown in the figures in subsections (a) and (c) of this section based on conditions or exposure levels at a particular affected property and in accordance with the conditions specified. A person shall provide the supporting documentation to justify the use of such alternative factors to the executive director.

(A) Gastrointestinal absorption fraction (ABS_{GI}). A person or the executive director may use an alternative scientifically justifiable gastrointestinal absorption fraction value. Only in cases where the gastrointestinal absorption fraction is less than 50% shall the oral slope factor and oral reference dose be adjusted using equation RBEL-2 as shown in the figure in subsection (a) of this section, as applicable, to calculate the corresponding dermal slope factor and dermal reference dose. The person shall not use the gastrointestinal absorption fraction to modify the oral slope factor or oral reference dose for any exposure pathway other than the dermal exposure pathway. In the event the executive director determines a more scientifically valid gastrointestinal absorption fraction, that fraction shall be presumed to be the appropriate fraction and the person shall use that fraction unless a person rebuts that value with a scientifically valid study or by other credible published authority.

(B) Dermal absorption fraction (ABS.d). A person or the executive director may conduct a scientifically valid study using property-specific soils or may use alternative scientifically justifiable dermal absorption values. In the event the executive director determines a more scientifically valid dermal absorption fraction, that fraction shall be presumed to be the appropriate fraction and the person shall use that fraction unless a person rebuts that fraction with a scientifically valid study using property-specific soils or by other credible published authority.

(C) Relative bioavailability factor (RBAF). A person or the executive director may conduct a scientifically valid bioavailability study using property-specific soils or may conduct mineralogical evaluations of the chemical form of a COC present in soils at the affected property. In the event the executive director determines a more scientifically valid relative bioavailability factor, that factor shall be presumed to be the appropriate relative bioavailability factor and the person shall use that factor unless a person rebuts that factor with a scientifically valid bioavailability study using property-specific soils, mineralogical

evaluation of the chemical form of a chemical of concern present in soils at the affected property, or by other credible published authority.

(2) Under Tiers 2 or 3 as provided in §350.75 of this title , a person may request that the executive director allow a variance to the following default commercial/industrial exposure factors for the affected property as shown in the figure in subsection (a) of this section: averaging time for noncarcinogens (AT.w), exposure duration (ED.w), and exposure frequency (EF.w). This shall only be allowed for facilities that have or will have, as a condition of the approval of this variance, restricted property access. The executive director shall not delegate this decision to agency staff.

(A) The person shall submit information to the executive director which demonstrates that variance from the default exposure factors is supported by property-specific information; historical, current, and probable future land use; redevelopment potential; and compatibility with surrounding land use. The person shall also provide written concurrence from the landowner for the placement of the institutional control in the county deed records, as required in subparagraph (L) of this paragraph, unless the property is subject to zoning or governmental ordinance which is equivalent to the deed notice, Voluntary Cleanup Program certificate of completion or restrictive covenant that otherwise would have been required.

(B) The person requesting such variance shall provide public notification as described in subparagraphs (D) and (E) of this paragraph for any request to vary the default exposure factors at the same time that variance-based protective concentration levels (PCLs) are submitted to the executive director for approval. If the natural physical condition of the on-site commercial/industrial area for which the variance is sought essentially prohibits full commercial/industrial use (e.g., marshes and cliffs), and the variance would not necessitate a lesser commercial/industrial use of that area, then the executive director will determine the need for public notice on a site-specific basis for the prohibited use area. The person may request the executive director or his staff to review the variance-based PCLs or the variance request for completeness (e.g., administratively complete, mathematical accuracy, compliance with other PCL development procedures) in advance of initiating the public notification process. The required public notice shall be completed prior to consideration of the variance request for approval by the executive director. The public notice provisions may be performed in conjunction with or as part of another public participation/notification process required for permitting or other applicable state or federal statute or regulation provided the requirements of subparagraph (E) of this paragraph are also met. Additionally, an alternative mechanism that may exist under the other public participation/notification process which effectively provides broad public notice of the variance request, such as notification to an existing citizens' advisory board for the affected property/facility, may substitute for the requirements of subparagraph (D) of this paragraph, provided the completion of the notification is sufficiently documented.

(C) The notice shall contain, at a minimum, the following information:

(i) the name, address and telephone number of the person requesting the variance;

(ii) the address and the physical description for the location of the property and the agency case designation number;

(iii) the modified value(s) the person seeks to use and the associated default exposure factor(s) as shown in the figure in subsection (a) of this section without any statements or other indications that such variance has been approved or otherwise considered favorably by the executive director or the executive director's staff other than that it has been reviewed for completeness;

(iv) a clear and concise explanation as to the effect the variance will have on the future use of the subject property and on surrounding properties;

(v) a statement that more detailed information regarding the variance request is available for review at the agency's central office in Austin, Texas, 8:00 am - 5:00 pm Monday thru Friday; and

(vi) a notice to the public of the opportunity to submit written information, within 30 calendar days after the date of the initial published notice (publish the actual date), to the executive director which demonstrates that the proposal for variance from the default exposure factors would be compatible or incompatible with existing neighboring land uses and preservation of the active and productive land use of the subject property.

(D) The notice shall be published in a newspaper distributed daily, if available, and generally circulated in the county or area where the property is located. The notice shall be published once a week for three weeks, with at least one of the notices appearing in a Sunday edition, if available.

(E) The notice shall be sent to the following persons in clauses (i) - (viii) of this subparagraph by certified mail, return receipt requested:

(i) all adjacent landowners;

(ii) the local municipality planning board or similar governmental unit, if applicable;

(iii) local taxing authorities;

(iv) the mayor and health authorities of the city in which the property is located, if applicable;

(v) the county judge and county health authority of the county in which the property is located;

(vi) the agency's Public Interest Counsel;

(vii) all persons or organizations who have requested the notice or expressed interest; and

(viii) other persons or organizations specified by the executive director.

(F) The person shall provide copies of each notice sent by mail, copies of the published notice, and copies of the signed publisher's affidavit for the initial notice to the agency's Austin office and to the appropriate agency region office within 10 calendar days after the initial publication and mailing. Copies of the signed publisher's affidavits for the subsequent notices shall be provided to the agency's Austin office and to the appropriate agency region office within 10 days of both subsequent notices.

(G) At the executive director's request, and at the expense of the person, the person shall schedule and hold a public meeting at a time and place which are convenient for persons identified in subparagraph (E) of this paragraph. The forum chosen for the meeting shall comply with the Americans with Disabilities Act. Prior to scheduling the public meeting, the person shall coordinate the scheduling of the public meeting with the executive director's office to ensure the availability of agency personnel for the meeting. The person shall confirm with the executive director's office the date, time, and location of the meeting not less than 15 days prior to the meeting. The meeting shall be open to the public to provide information on the request to vary the default exposure factors and to allow for comments by the public. The person shall again confirm with the executive director's office on the time and place of the meeting at least 72 hours prior to the meeting.

(H) In order to inform persons of the public meeting, the person shall, at least 30 calendar days prior to the public meeting, follow the notification process required in subparagraphs (C) - (F) of this paragraph with the following exceptions:

(i) the notice shall be supplemented to include the date, time, and location of the public meeting and to indicate that the meeting is open to the public for the purposes of providing information on the request to vary default exposure factors and to provide the public the opportunity to provide comments on the request;

(ii) the notice shall indicate that the public shall have 15 calendar days after the date of the public meeting to submit written information to the executive director which demonstrates that the proposal for variance from the default exposure factors would be compatible or incompatible with existing neighboring land uses and preservation of the active and productive land use of the subject property; and

(iii) the notice by publication of the public meeting shall only be published once and shall be placed in a Sunday edition, if available.

(I) The executive director's decision on the request for a variance from the default exposure factors shall occur at least 15 calendar days after any public meeting or if no public meeting is held, at least 45 days after the date of the initial published notice. The executive director's decision shall be based upon property-specific data; historical, current, and probable future land use; redevelopment potential; and compatibility with surrounding land use. The executive director shall not consider the costs incurred for any actions taken by the person in anticipation that the variance would be approved by the executive director.

(J) At the same time that the executive director's decision is mailed to the person requesting the variance, a copy of this decision shall also be mailed to all persons identified in subparagraph (E) of this paragraph. The notice of the executive director's decision shall explain the method for submitting a motion for reconsideration of the executive director's decision by the commission.

(K) The person requesting the variance and persons identified in subparagraph (E) of this paragraph may file with the chief clerk a motion to overturn related to the request for variance, in accordance with §50.139 of this title (relating to Motion to Overturn Executive Director's Decision).

(L) A person who receives a variance from the default exposure factors shall comply with the institutional control requirements in §350.111(b), (b)(12), or (13) of this title (relating to Use of Institutional Controls), as applicable, and provide proof of compliance with the institutional control requirements within 90 days of the approval by the executive director of the response action completion report.

(3) The person shall not vary the following exposure factors shown in the figure in subsection (a) of this section.

(A) averaging time for residents for noncarcinogens (AT.A.res and AT.C.res) or carcinogens (ATc);

(B) body weight for adults and children (BW.A, BW.C, $BW_{(0<6)}$, $BW_{(6<18)}$, and $BW_{(18<30)}$);

(C) exposure duration for residents (ED.A.res, ED.C.res, $ED_{(0<6)}$, $ED_{(6<18)}$, and $ED_{(18<30)}$);

(D) exposure frequency for residents (EF.res);

(E) ingestion rate for soil, water, or vegetables (IRsoil.AgeAdj.res, IRsoil.C.res, IRsoil.w, IRw.AgeAdj.res, IRw.C.res, IRw.w, IRabg.AgeAdj.res, IRbg.AgeAdj.res, IRabg.C.res, IRbg.C.res);

(F) toxicity modifying factor (MF);

(G) skin surface area (SA.C.res, $SA_{(0<6)}$, $SA_{(6<18)}$, $SA_{(18<30)}$, SA.w);

(H) soil-to-skin adherence factors (AF.C.res, $AF_{(0<6)}$, $AF_{(6<18)}$, $AF_{(18<30)}$, and AF.w).

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 24, 2020.

TRD-202001643
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 14, 2020
Proposal publication date: November 8, 2019
For further information, please call: (512) 239-6812

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 13. UNCLAIMED PROPERTY REPORTING AND COMPLIANCE

34 TAC §§13.4, 13.6 - 13.8, 13.21

The Comptroller of Public Accounts adopts new §§13.4, concerning report and delivery of certain personal tangible property; 13.6, concerning minimum requirements for a claim; and 13.7, concerning identification of claimed property; burden. The comptroller also adopts amendments to §13.21 concerning property report format. These rules are adopted without changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 327) and will not be republished.

The Comptroller of Public Accounts adopts new §13.8 concerning certain mineral proceeds; supporting documentation required, with changes to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 327). The rule will be republished. The comptroller is withdrawing new §13.5 in response to comments received and will be submitting the withdrawal in a separate submission at the same time this adoption is submitted.

Section 13.4 provides that tangible personal property shall be reported in the manner prescribed by the Comptroller's Unclaimed Property Reporting Instructions. It also requires holders to provide a detailed description of the property to the comptroller and identify whether the property has been contaminated by biohazardous material. Finally, this section provides that the comptroller can determine that the property has insubstantial value and require a holder to destroy or otherwise dispose of the property before delivery to the comptroller.

Section 13.6 describes the minimum requirements for a claim.

Section 13.7 describes that a person making a claim for unclaimed property has the burden of identifying the property in the possession of the comptroller that is being claimed.

Section 13.8 provides additional documentation requirements for claims involving mineral proceeds reported to the comptroller with an unknown or unidentified owner. The section also contained a punctuation error which is now being corrected.

The amendment to §13.21 allows the comptroller to prescribe the electronic file format to be used to file a property report by publishing in the Comptroller's Unclaimed Property Reporting Instructions.

Two comments were received regarding adoption of the proposed rules.

The comptroller received comments from the Independent Bankers Association of Texas that were supportive of the adoption of proposed new §13.4 and the proposed amendment of §13.21.

The comptroller also received comments from the Texas Oil and Gas Association regarding proposed new §13.5. The Texas Oil and Gas Association did not support the adoption of §13.5. The comments reflected a concern that implementing this rule would require substantive and potentially costly changes to member's property tracking systems. The comments also reflected a concern that not all oil and gas producers that would be affected by the proposed section would be able to comply with the requirements of the new section by the next reporting deadline of July 1, 2020. In response to these concerns, the comptroller is withdrawing new §13.5 in a separate submission.

The new rules and amendment are adopted under Property Code, §74.701, which authorizes the comptroller to adopt rules necessary to carry out Property Code, Title 6, regarding unclaimed property.

The new rules and amendment implement Property Code, Chapter 74.

§13.8. Certain Mineral Proceeds; Supporting Documentation Required.

(a) For mineral proceeds reported to the comptroller as having an unknown or unidentified owner, a person making a claim for the mineral proceeds must, in addition to the requirements of §13.6, of this title (relating to Minimum Requirements for a Claim) include documentation demonstrating that the claimant either:

(1) was the owner of the underlying mineral interest or had an interest, whether possessory or non-possessory, in the mineral proceeds at the time the minerals were produced; or

(2) is the legal heir or successor in title of the person who was the owner of the underlying mineral interest, whether possessory or non-possessory, or who had an interest in the mineral proceeds at the time the minerals were produced.

(b) The comptroller may require a person claiming mineral proceeds under this section to provide a final judgment in an action to quiet title, as to all potential owners or claimants of the underlying mineral interest, issued by a court of competent jurisdiction in the county in which each mineral interest is located.

(c) For a claim made under this section, the comptroller may require additional documentation as may be appropriate under the circumstances, including information about heirship and transfer of property by probate proceedings, deed, or other method of conveyance.

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 21, 2020.

TRD-202001549
Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Effective date: May 11, 2020
Proposal publication date: January 10, 2020
For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 23. ADMINISTRATIVE PROCEDURES

34 TAC §23.5

The Teacher Retirement System of Texas (TRS) adopts amendments to rule §23.5, relating to nomination for appointment to the Board of Trustees. Section 23.5 is adopted without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1841). The rule will not be republished.

The amendments are necessary to address minor issues identified in the most recent election and clarify terminology to update TRS election practices. TRS adopts these amendments at this time in order for the amendments to be effective prior to June 2020, which is the beginning of the nomination period for the 2021 Trustee election.

TRS received no public comments related to the amendments to 34 TAC §23.5.

Statutory Authority: The amendments are adopted under the authority of Texas Government Code §825.002, which provides that nominees for appointment to the Board of Trustees must be nominated at an election conducted under rules adopted by the Board of Trustees; and Texas Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

Cross-Reference to Statute: The adopted amendments affect the following statutes: §825.002, Government Code, which establishes the method of nominating candidates for positions on the Board of Trustees and for appointment by the Governor; §825.0031, Government Code, which provides that appointments to the TRS Board of Trustees shall be made without regard to race, color, disability, sex, religion, age, or national origin; §825.004, Government Code, which describes how a vacancy on the Board of Trustees will be filled; and §821.001, Government Code, which defines "employee" and "employer" for TRS purposes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 22, 2020.

TRD-202001563

Don Green
Chief Executive Officer
Teacher Retirement System of Texas
Effective date: May 12, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 542-6569

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 10. IGNITION INTERLOCK DEVICE

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§10.4 - 10.6

The Texas Department of Public Safety (the department) adopts amendments to §10.4 and new §10.5 and §10.6, concerning General Provisions. These rules are adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1360). The rules will not be republished.

These rule changes implement Senate Bill 616, 86th Legislative Session. This bill authorizes the department to obtain fingerprints and to access and use criminal history record information that relates to those who hold or apply for authorization to act as vendors of ignition interlock devices. This authority requires the adoption of rules relating to disqualifying criminal offenses and the procedures for appeal of licensing actions based on criminal history determinations. Senate Bill 616 also requires adoption of procedures for the informal resolution of complaints against ignition interlock vendors.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476 which authorizes the department to adopt rules to administer the program; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including the Ignition Interlock Device program.

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 24, 2020.

TRD-202001573
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 14, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 424-5848

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SUBCHAPTER B. VENDOR AUTHORIZATION

37 TAC §§10.11, 10.13, 10.14, 10.17

The Texas Department of Public Safety (the department) adopts amendments to §§10.11, 10.13, and 10.14 and new §10.17, concerning Vendor Authorization. Sections 10.11, 10.13, and 10.17 are adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1361) and will not be republished. Section 10.14 is adopted with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1361) and will be republished.

These rule changes and new rule implement Senate Bill 616, 86th Legislative Session. This bill authorizes the department to obtain fingerprints and to access and use criminal history record information that relates to those who hold or apply for authorization to act as vendors of ignition interlock devices. This authority requires the adoption of rules relating to disqualifying criminal offenses and the procedures for appeal of licensing actions based on criminal history determinations. Senate Bill 616 also requires adoption of procedures for the informal resolution of complaints against ignition interlock vendors. Senate Bill 616 requires changes to the date of expiration, the adoption of procedures for the informal resolution of complaints against device vendors, and the development of a penalty schedule for violations of a law or rule relating to the vendor authorization.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476 which authorizes the department to adopt rules to administer the program; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including the Ignition Interlock Device program.

§10.14. Reprimand, Suspension, or Revocation Of Vendor Authorization.

(a) The department may reprimand, suspend, or revoke an authorization if the vendor:

(1) Fails to submit the required reports to the department pursuant to §10.12 of this title (relating to Vendor Standards);

(2) Willfully or knowingly submits false, inaccurate, or incomplete information to the department;

(3) Violates any provision of §10.12 of this title;

(4) Fails to pay the annual inspection fee as provided in §10.15 of this title (relating to Inspections and Fees);

(5) Violates any law of this state relating to the conduct of business in this state;

(6) Is determined to be disqualified, or if a vendor's partner, shareholder, director or officer as described in §10.11 of this title (relating to Application; Renewal) is disqualified, under §10.6 of this title (relating to Disqualifying Offenses); or

(7) Otherwise violates the Act or this chapter.

(b) Prior to taking action against an authorization for a violation of subsection (a) of this section, the department will provide notice pursuant to §10.3 of this title (relating to Notice).

(c) The department's determination to revoke an authorization for any administrative, noncriminal history based violation may be based on the considerations described in paragraphs (1) - (6) of this subsection:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) The economic harm to property or the public caused by the violation;

(3) The effect of the violation on the efficient administration of the program;

(4) The history of previous violations, including any warnings or other attempts to gain compliance;

(5) Efforts to correct the violation; and

(6) Any other matter that justice may require.

(d) The revocation will become final on the thirtieth calendar day following the vendor's receipt of the notice of revocation, unless the vendor requests a hearing as outlined in §10.4 of this title (relating to Informal Hearings; Settlement Conference).

(e) The revocation proceeding may be dismissed, or the revocation may be probated, upon a showing of compliance.

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 24, 2020.

TRD-202001574
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 14, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 424-5848

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SUBCHAPTER D. IGNITION INTERLOCK DEVICE APPROVAL

37 TAC §10.32

The Texas Department of Public Safety (the department) adopts amendments to §10.32, concerning Denial of Request for Approval; Revocation of Device Approval. This rule is adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1363). The rule will not be republished.

This rule change is a non-substantive change to the title of a cross-referenced rule. The latter rule's title is being changed as part of the department's implementation of Senate Bill 616, 86th Legislative Session.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.2476 which authorizes the department to adopt rules to administer the program; and Texas Government Code, Chapter 411, Subchapter Q and Subchapter R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including the Ignition Interlock Device program.

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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D. Phillip Adkins
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CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1, 23.3, 23.5, 23.6

The Texas Department of Public Safety (the department) adopts amendments to §§23.1, 23.3, 23.5, and 23.6, concerning Vehicle Inspection Station and Vehicle Inspector Certification. These rules are adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1364) and will not be republished.

These rule changes are in part necessary to implement Senate Bill 616, 86th Legislative Session, which amends Texas Transportation Code, Chapter 548. The adopted amendments in §23.5, concerning Vehicle Inspection Station and Vehicle Inspector Disqualifying Criminal Offenses, implement House Bill 1342, 86th Legislative Session, which amended Occupations Code, §§53.021, 53.022, and 53.023. The adopted amendments in §23.6, concerning Training, clarify the department's authority to provide online training for vehicle inspectors.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; Texas Transportation Code, §548.410, which authorizes the Department of Public Safety to adopt rules establishing the expiration dates of inspector and station certificates; and Texas Transportation Code, §548.506 and §548.507, which authorizes the Public Safety Commission to adopt rules establishing fees for certification as a vehicle inspector, and as an inspection station, respectively.

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. GENERAL VEHICLE INSPECTION STATION REQUIREMENTS

37 TAC §§23.12 - 23.14

The Texas Department of Public Safety (the department) adopts amendments to §§23.12 - 23.14, concerning General Vehicle Inspection Station Requirements. These rules are adopted with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1368). The rules will be republished.

The adopted amendment to §23.12, concerning Standards of Conduct, implements Senate Bill 711, 86th Legislative Session, which authorizes the Department of Public Safety to include vehicle safety recall information on the Vehicle Inspection Report. The rule requires the vehicle inspector to advise the vehicle owner or operator of the recall. The adopted amendment to §23.13, concerning Equipment Requirements for All Classes of Vehicle Inspection Stations, removes an unnecessary equipment requirement, and the adopted amendment to §23.14, concerning Vehicle Inspection Station Signage, clarifies that the requirement to post the station's hours of operation refers only to the hours vehicle inspections are offered.

The department accepted comments on the proposed amendments through March 30, 2020. Written comments relating to §23.12 were submitted by Laird Doran, on behalf of Gulf States Toyota, Inc.; Lori McMahon, on behalf of Toyota Motor North America; Karen Phillips, on behalf of Texas Automobile Dealers Association; Phil Elam, on behalf of Texas Recreational Vehicle Association; Scott Morrison, on behalf of National Autotech Inc.; Mark Bochnowski, on behalf of Lube n Go; Brandi Bird, on behalf of Texas State Inspection Association; Raul Leal, on behalf of Radiadores; Brian Newton, on behalf of Take 5 Oil Change, and State Senator Juan Hinojosa.

The substantive comments received and the department's responses are summarized below. Additional concerns were raised during the Vehicle Inspection Advisory Committee meeting on March 25, 2020, resulting in clarifying changes to the proposal. No comments were received on §23.13 or §23.14.

COMMENT:

Ms. Phillips, Ms. Bird, Mr. Bochnowski, Mr. Morrison, Mr. Newton, and Sen. Hinojosa raised the concern that the recall information may be complicated and that an inspector may not have the knowledge or expertise to review the details with a vehicle owner or operator. Mr. Elam raised a similar concern specifically relating to the inspection of recreational vehicles, indicating that few inspectors would be qualified to review with the vehicle owner or operator the details regarding recalls due to the complexity of the components used in the manufacturing of recreational vehicles. Mr. Leal is understood to have similar concerns, as his proposed language removes the relevant language.

RESPONSE:

The department agrees with these comments and is removing the requirement to review the details of the recall information with the vehicle owner or operator.

COMMENT:

Ms. Bird, Mr. Bochnowski, Mr. Morrison, and Mr. Newton raised the concern that the proposed language appears to require the inspector determine whether the recall related repairs have been completed. Mr. Leal is understood to have similar concerns, based on his proposed alternative language.

RESPONSE:

The department agrees with this comment, and is removing the language referring to repairs.

COMMENT:

Mr. Doran, Ms. McMahon, Ms. Philips, and Sen. Hinojosa raised the concern that the inspector may never have direct contact with the vehicle owner or operator, or that such contact may not be practical under certain circumstances.

RESPONSE:

The department agrees with this comment and is modifying the proposal to authorize the vehicle inspection station owner to delegate the responsibility to another employee. Under the amended proposal, the station owner will be responsible for ensuring compliance with the rule. In addition, the proposal is amended to apply only "where reasonably practical."

COMMENT:

Ms. Bird, Mr. Bochnowski, Mr. Leal, Mr. Morrison, and Mr. Newton asked that the proposal include a signature line on the vehicle inspection report for the customer to acknowledge the inspector's compliance with the requirements of the proposal. Ms. Bird and Mr. Newton also ask that the customer be required to sign this acknowledgment.

RESPONSE:

This content of the vehicle inspection report is outside the scope of the proposed rule amendment. No changes were made to the proposal based on these comments.

COMMENT:

Mr. Doran, Ms. Bird, Mr. Bochnowski, Mr. Morrison, Mr. Leal, and Mr. Newton requested the addition of language to clarify that the rule is not effective until the necessary software changes have been made to add the recall information to the vehicle inspection report.

RESPONSE:

The department agrees with this comment, and is modifying the proposal to state "If the vehicle inspection reports shows the vehicle being inspected to be subject to a safety recall to indicate that the rule would not be effective until the recall information was added to the vehicle inspection report.

COMMENT:

Mr. Elam suggested in lieu of the proposed rule the department provide written notice of the existence of a recall, and he provided proposed language for such notice. Mr. Doran and Ms. Phillips also provided proposed language to be included in the vehicle inspection report.

RESPONSE:

This content of the vehicle inspection report is outside the scope of the proposed rule amendment. No changes were made to the proposal based on this comment.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

§23.12. Standards of Conduct.

(a) All vehicle inspection stations must record the inspection of all vehicles, whether the vehicle passed, failed, or was repaired, into the appropriate state vehicle inspection database using a department provided device at the time of that inspection.

(b) The DPS Training and Operations Manual for official vehicle inspection stations and certified vehicle inspectors must be the instruction and training guide for the operation of all vehicle inspection stations and certified vehicle inspectors. It will serve as procedure for all vehicle inspection station operations and inspections performed.

(c) Fleet and government vehicle inspection stations must not inspect vehicles owned by officers, employees, or the general public.

(d) A vehicle inspection station must have a certified and properly endorsed vehicle inspector to perform inspections in a prompt manner during posted business hours.

(e) No vehicle inspection station shall refuse to inspect a vehicle for which it is endorsed that is presented for inspection during the posted business hours.

(f) A certified vehicle inspector must conduct a complete and thorough inspection of every vehicle presented for an official inspection in accordance with this chapter and Texas Transportation Code, Chapter 548 (the Act), as authorized by the vehicle inspector's certification and by the vehicle inspection station's endorsement.

(g) A certified vehicle inspector must not use, nor be under the influence of, alcohol or drugs while on duty. Prescription drugs may be used when prescribed by a licensed physician, provided the inspector is not impaired while on duty.

(h) A certified vehicle inspector must inspect a vehicle presented for inspection within a reasonable time.

(i) A certified vehicle inspector must notify the department representative supervising the vehicle inspection station immediately if his driver license is suspended or revoked.

(j) A certified vehicle inspector must conduct each inspection in the approved inspection area of the vehicle inspection station location designated on the certificate of appointment. The road test may be conducted outside this area.

(k) The certified vehicle inspector must consult the vehicle owner or operator prior to making a repair or adjustment.

(l) Inspections may be performed by more than one certified vehicle inspector, but the inspector of record is responsible for ensuring the inspection is completed in accordance with the Act and this chapter.

(m) The certified vehicle inspector must not require a vehicle owner whose vehicle has been rejected to have repairs made at a specific garage.

(n) The certified vehicle inspector must maintain a clean and orderly appearance and be courteous in his contact with the public.

(o) Any services offered in conjunction with the vehicle inspection must be separately described and itemized on the invoice or receipt.

(p) At the conclusion of the inspection, the vehicle inspector must issue a signed vehicle inspection report to the owner or operator of the vehicle indicating whether the vehicle passed or failed.

(q) If the vehicle inspection report shows the vehicle being inspected to be subject to a safety recall, where reasonably practical, the inspector shall advise the vehicle owner or operator that the vehicle is subject to a recall and that further details can be obtained from the dealer or manufacturer. The vehicle inspection station owner may delegate this responsibility to another employee of the station but the station owner is responsible for ensuring compliance with this section.

§23.13. Equipment Requirements for All Classes of Vehicle Inspection Stations.

(a) All testing equipment must be approved by the department. All testing equipment must be installed and used in accordance with the manufacturer's and department's instructions. Equipment must be arranged and located at or near the approved inspection area and readily available for use.

(b) When equipment adjustments and calibrations are needed, the manufacturer's specifications and department's instructions must be followed. Defective equipment must not be used and the vehicle inspector or station must cease performing inspections until such equipment is replaced, recalibrated or repaired and returned to an operational status.

(c) To be certified as a vehicle inspection station, the station is required to possess and maintain, at a minimum, the equipment listed in paragraphs (1) - (7) of this subsection:

(1) a measured and marked brake test area which has been approved by the department, or an approved brake testing device;

(2) a measuring device clearly indicating measurements of 12 inches, 15 inches, 20 inches, 24 inches, 54 inches, 60 inches, 72 inches and 80 inches to measure reflector height, clearance lamps, side marker lamps and turn signal lamps on all vehicles, with the exception that the 80 inch measuring device requirement does not apply to motorcycle-only vehicle inspection stations;

(3) a gauge for measuring tire tread depth;

(4) a measuring device for checking brake pedal reserve clearance. This requirement does not apply to vehicle inspection stations with only a motorcycle endorsement;

(5) a department approved device for measuring the light transmission of sunscreening devices. This requirement does not apply to government inspection stations, or fleet inspection stations that have provided the department biennial written certification that the station has no vehicles equipped with a sunscreening device. This requirement does not apply to vehicle inspection stations with only a motorcycle and/or trailer endorsement; and

(6) a department approved device with required adapters for checking fuel cap pressure. The department requires vehicle inspection stations to obtain updated adapters as they become available from the manufacturer. A vehicle inspection station may not inspect a vehicle for which it does not have an approved adapter for that vehicle. This device is not required of government inspection stations or fleet inspection stations which have provided the department biennial written certification that the station has no vehicles meeting the criteria for checking gas cap pressure or that these vehicles will be inspected by a public inspection station capable of checking gas caps. This device is not required of motorcycle-only or trailer-only inspection stations and

certain commercial inspection stations that only inspect vehicles powered by a fuel other than gasoline.

(d) To be certified as a non-emissions vehicle inspection station, the station must have:

(1) an approved and operational electronic station interface device;

(2) a printer and supplies necessary for printing a vehicle inspection report on 8 1/2 x 11 paper; and

(3) a telephone line, or internet connection for the electronic station interface device to be used during vehicle inspections either dedicated solely for use with the electronic device, or shared with other devices in a manner approved by the department.

(e) For vehicle emissions inspection station requirements, see Subchapter E of this chapter (relating to Vehicle Emissions Inspection and Maintenance Program).

§23.14. Vehicle Inspection Station Signage.

(a) Every public vehicle inspection station must display the official vehicle inspection station sign and inspection hours in a manner clearly visible to the public.

(b) The official vehicle inspection station sign remains the property of the department as a means of identification of the vehicle inspection station. The sign must be surrendered upon demand by the department.

(c) The department will issue only one official vehicle inspection station sign per public vehicle inspection station license issued. The sign must not be altered in any manner. Dissimilar signs may also be displayed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
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SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.51, §23.55

The Texas Department of Public Safety (the department) adopts amendments to §23.51 and §23.55, concerning Vehicle Emissions Inspection and Maintenance Program. These rules are adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1369) and will not be republished.

These rule amendments address changes to the vehicle emission test requirements that became effective January 1, 2020.

The adopted amendments remove references to vehicle emissions tailpipe tests, i.e., the Acceleration Simulation Mode (ASM) and Two-Speed Idle (TSI) tests, and the related equipment requirements. These tests, and the equipment necessary to conduct them, are no longer necessary as of January 1, 2020. On that date the vehicles for which these tests were necessary became exempt from the state's emission inspection requirements.

On January 1, 2020, model year 1995 vehicles became exempt from the state's emissions inspection requirements pursuant to Texas Health and Safety Code §382.203(a)(2) (exempting vehicles twenty five years old or older). In addition, pursuant to federal Environmental Protection Agency regulations, model year 1996 and newer vehicles are equipped with on-board diagnostics (OBD) systems that enable emissions tests using the vehicle's computer and which render tailpipe tests unnecessary. For these reasons the tailpipe tests and the equipment necessary to conduct them are no longer be necessary as of January 1, 2020.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

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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37 TAC §23.56

The Texas Department of Public Safety (the department) adopts the repeal of §23.56, concerning Waiver for Low Volume Emissions Inspection Stations. This repeal is adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1372) and will not be republished.

This repeal addresses changes to the vehicle emission test requirements that became effective January 1, 2020.

Section 23.56 authorizes a waiver from the requirement that vehicle emissions inspection stations maintain the equipment necessary to conduct vehicle emissions tailpipe tests. These tests, and the equipment necessary to conduct them, are no longer necessary as of January 1, 2020. On that date, model year 1995 vehicles became exempt from the state's emissions inspection requirements pursuant to Texas Health and Safety Code, §382.203(a)(2) (exempting vehicles twenty five years old or older). In addition, pursuant to federal Environmental Protection Agency regulations, model year 1996 and newer vehicles are equipped with on-board diagnostics (OBD) systems that enable emissions tests using the vehicle's computer and which render tailpipe tests unnecessary. For these reasons the tailpipe tests and the equipment necessary to conduct them are

no longer necessary as of January 1, 2020, and §23.56's waiver therefore is unnecessary.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

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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D. Phillip Adkins
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SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62, §23.63

The Texas Department of Public Safety (the department) adopts amendments to §23.62 and §23.63, concerning Violations and Administrative Penalties. These rules are adopted with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1373) and will be republished. The department inadvertently struck "certificate" in the amended proposal of §23.63(a), is including the deleted text, and is striking a superfluous "or". Section 23.62 will not be republished. Section 23.63 will be republished.

The adopted amendments reflect Senate Bill 616's authorization for the adoption of procedures relating to the informal resolution of complaints against vehicle inspectors and inspection stations and the development of a penalty schedule for violations of a law or rule relating to the inspection of vehicles. The amendments also remove statutory references to Texas Transportation Code, §548.405 and §548.407, which were repealed by Senate Bill 616.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code Chapter 411, Subchapters Q and R, which authorize the Public Safety Commission to adopt rules governing various regulatory programs, including that of the Vehicle Inspection program; and Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548.

§23.63. Informal Hearings; Settlement Conference.

(a) A person who receives notice of the department's intention to deny an application for an inspector certificate, to suspend or revoke an inspector certificate or to impose an administrative penalty under §23.62 of this title (relating to Violations and Penalty Schedule), may appeal the decision by submitting a request to appeal by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Vehicle Inspection Program website within thirty (30) calendar days after receipt of notice of the department's proposed action. If a written request to appeal is not submitted within thirty (30) calendar days of the date notice was received, the right to an informal hearing or settlement conference, as applicable, or a hearing before the State Office of Administrative Hearings, is waived, and the action becomes final.

(b) If the action is based on the person's criminal history, a preliminary, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the proposed action, or issue a written statement of findings to the respondent either upholding or modifying the original proposed action.

(c) If the proposed action is based on an administrative violation, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone, by agreement of the parties. Following the settlement conference, the parties will execute an agreed order, or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings following a preliminary hearing, or its determination following a settlement conference, may be appealed to the State Office of Administrative Hearings by submitting a request by mail, facsimile, or electronic mail, to the department in the manner provided on the department's Vehicle Inspection Program website, within thirty (30) calendar days after receipt of the findings or determination. If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
General Counsel
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CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §36.1

The Texas Department of Public Safety (the department) adopts amendments to §36.1, concerning Definitions. This rule is adopted without changes to the proposed text as published in

the February 28, 2020, issue of the *Texas Register* (45 TexReg 1377). The rule will not be republished.

These rule changes clarify certain terms and enhance the department's regulatory oversight of the Metal Recycling Entities Program.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

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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D. Phillip Adkins
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SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §36.11

The Texas Department of Public Safety (the department) adopts amendments to §36.11, concerning Application for Certificate of Registration. This rule is adopted without changes to the proposed text as published in the February 28, 2020 issue of the *Texas Register* (45 TexReg 1378). The rule will not be republished.

These rule changes clarify certain terms and enhance the department's regulatory oversight of the Metal Recycling Entities Program.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

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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D. Phillip Adkins
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SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.34, §36.36

The Texas Department of Public Safety (the department) adopts amendments to §36.34 and §36.36, concerning Practice by Certificate Holders and Reporting Requirements. These rules are adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1379). The rules will not be republished.

These rule changes clarify certain terms and enhance the department's regulatory oversight of the Metal Recycling Entities Program.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

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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D. Phillip Adkins
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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §§36.51, 36.53, 36.55 - 36.57

The Texas Department of Public Safety (the department) adopts amendments to §§36.51, 36.53, 36.55, 36.56, and new §36.57, concerning Disciplinary Procedures and Administrative Procedures. The rules are adopted with changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1380). A comma was added to §36.55(a). The title of §36.56 has been changed from Informal Hearings to Informal Hearing; Settlement Conference to better describe the new

language added in this section. Sections 36.55 and 36.56 will be republished. The other rules will not be republished.

These rule changes are in part necessary to clarify the scope of the department's regulatory authority, and in part to implement Senate Bill 616, 86th Legislative Session. Senate Bill 616 requires the adoption of procedures for the informal resolution of complaints against metals recycling entities. In addition, changes to §36.55 implement House Bill 1342, 86th Legislative Session, which amended Occupations Code, §§53.021, 53.022, and 53.023. Other rule changes simplify the rules or enhance the department's regulatory oversight of the Metal Recycling Entities Program.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

§36.55. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration if the applicant, the owner with a controlling interest in the business or, if applicable, the entity's on-site representative, has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined the types of offenses detailed in this subsection directly relate to the duties and responsibilities of metal recycling entities. A conviction for an offense within one (1) or more of the categories listed in paragraphs (1) - (9) of this subsection may result in the denial of an original or renewal application for a certificate of registration or the revocation of a certificate of registration. The Texas Penal Code references provided in this section are for illustrative purposes and are not intended to exclude similar offenses in other state or federal codes. The types of offenses directly related to the duties and responsibilities of metal recycling entities include, but are not limited to:

(1) Arson, Criminal Mischief, and other Property Damage or Destruction (Texas Penal Code, Chapter 28);

(2) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30);

(3) Theft (Texas Penal Code, Chapter 31);

(4) Fraud (Texas Penal Code, Chapter 32);

(5) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36);

(6) Perjury and Other Falsification (Texas Penal Code, Chapter 37);

(7) Any violation of Texas Occupations Code, §1956.038 or §1956.040;

(8) Prohibited Weapon - Explosive Weapon (Texas Penal Code, §46.05(a)(1); and

(9) Component of Explosives (Texas Penal Code, §46.09).

(c) A felony conviction for one of the offenses listed in subsection (b) of this section, a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3(g) or Article 42A.054, is disqualifying for ten (10) years from the date of the conviction.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five (5) years from the date of conviction.

(e) For the purposes of this chapter, all references to conviction are to those for which the judgment has become final.

(f) A person who is otherwise disqualified pursuant to the criteria in this section may submit documentation as detailed in paragraphs (1) - (8) of this subsection as evidence of his or her fitness to perform the duties and discharge the responsibilities of a metal recycling entity:

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

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

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

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

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation;

(7) evidence the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and

(8) any other evidence relevant to the person's fitness for the certification sought.

(g) The failure to provide the required documentation in a timely manner may result in the proposed action being taken against the application or license.

§36.56. Informal Hearing; Settlement Conference.

(a) A person who receives notice of the department's intention to deny an application for a certificate of registration, to reprimand, suspend or revoke a certificate of registration, to prohibit the registrant from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, or to impose an administrative penalty under §36.60 of this title (relating to Administrative Penalties), may appeal the decision by submitting a request to appeal by mail, facsimile, or electronic mail, to the department in the manner provided on the department's metals recycling program website within thirty (30) calendar days after receipt of notice of the department's proposed action. If a written request to appeal is not submitted within thirty (30) calendar days of the date notice was received, the right to an informal hearing or settlement conference, as applicable, under this section or §36.57 of this title (relating to Hearings Before the State Office of Administrative Hearings) is waived and action becomes final.

(b) If the action is based on the person's criminal history, an informal, telephonic hearing will be scheduled. Following the hearing, the department will either dismiss the proceedings and withdraw the

proposed action, or issue a written statement of findings to the respondent either upholding or modifying the original proposed action.

(c) If the proposed action is based on an administrative violation, a settlement conference will be scheduled. The settlement conference may be conducted in person or by telephone, by agreement of the parties. Following the settlement conference, the parties will execute an agreed order, or, if no agreement is reached, the department will issue a written determination either upholding or modifying the originally proposed action.

(d) The department's findings resulting from the informal hearing, or its determination following a settlement conference, may be appealed as provided in §36.57 of this title. If a written request is not submitted within thirty (30) calendar days of the date notice was received, the findings or determination shall become final.

(e) Requests for continuance must be submitted in writing at least three (3) business days prior to the scheduled hearing or conference. Requests must be based on good cause. Multiple requests may be presumed to lack good cause and may be denied on that basis.

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 24, 2020.

TRD-202001599
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 14, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 424-5848

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37 TAC §§36.57 - 36.59

The Texas Department of Public Safety (the department) adopts the repeal of §§36.57 - 36.59, concerning Disciplinary Procedures and Administrative Procedures. This repeal is adopted without changes to the proposed text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1382). The rules will not be republished.

The repeal of these rules is adopted in conjunction with other amendments to the rules relating to hearings. The adopted amendments require the renumbering of the rules, and also provide the opportunity to repeal rules that are duplicative of other department-wide rules.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

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 24, 2020.

TRD-202001602
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: May 14, 2020
Proposal publication date: February 28, 2020
For further information, please call: (512) 424-5848

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Texas

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §300.303(l)

Analyte	Acceptable Limit
Metals	
Arsenic	1.5 ppm
Cadmium	0.3ppm
Lead	1.0ppm
Mercury	0.5ppm
Microbial Impurities	Total Aerobic Count
Total combined yeast molds count	
E-Coli	No detection
Campylobacter	No detection
Listeria monocytogenes	No detection
Salmonella	No detection
Shiga-Toxin	No detection
Staphylococcus	No detection
Yersinia	No detection
Pesticides	Chemical Abstract Services Number (CAS)
Acetamiprid	0.2ppm
Aldicarb	0.4ppm
Azoxystrobuin	0.2ppm
Bifenzate	0.2ppm
Boscalid	0.2ppm
Carbaryl	0.5ppm
Carbofuran	0.2ppm
Chlorantraniliprole	0.2ppm

Chloropyrifos	0.6ppm
Cypermethrin	18ppm
Diazinon	2.6ppm
Dichlorovos	0.1ppm
Ethoprophos	0.4ppm
Etofenprox	0.4ppm
Fipronil	1.0ppm
Flonicamid	1.0ppm
Imidacloprid	0.4ppm
Metalaxyl	0.2ppm
Methiocarb	0.4ppm
Methomyl	0.4ppm
Methyl parathion	8.5ppm
Myclobutanil	0.3ppm
Oxamyl	1ppm
Permethrin I	1.1ppm
Pyridaben	0.2ppm
Spiroxamine I	2ppm
Tebuconazole	0.4ppm
Thiacloprid	0.2ppm
Thiamethoxam	0.2ppm

Figure: 30 TAC §336.1310

Disposal Rate for the Compact Waste Disposal Facility

1. **Base Disposal Charge:**

1A. Waste Volume Charge	Charge per cubic foot ($/ft3)
Class A Low-Level Radioactive Waste (LLRW)	$100
Class B and C LLRW	$1,000
Sources – Class A	$500

1B. Radioactivity Charge	
Curie Inventory Charge ($/millicurie (mCi))	$0.05
Maximum Curie Charge (per shipment) (excluding C-14)	$220,000/shipment

2. **Surcharges to the Base Disposal Charge:**

2A. Weight Surcharge - Weight (lbs.) of Container	Surcharge ($/container)
Greater than 50,000 lbs	$20,000

2B. Dose Rate Surcharge - Surface Dose Rate (R/hour) of Container	Surcharge per cubic foot ($/ft3)
Greater than 500 R/hour	$400

2C. Irradiated Hardware Surcharge	
Surcharge for special handling per shipment	$75,000/shipment

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

COVID-19 Waivers

The Texas Department of Agriculture (TDA) has received the following waivers from the United States Department of Agriculture (USDA) in order to support the continued operation of meal services. As used herein, "CFR" refers to the Code of Federal Regulations. According to the United States Centers for Disease Control and Prevention, "COVID-19" refers to the coronavirus disease first identified in 2019, i.e., "CoronaVirusDisease-19."

TX-1 Waiver: TDA was granted the flexibility to waive the requirement under 7 CFR 225.6(e)(15) to maintain children on site while meals are consumed. The waiver allows sites operating the Summer Food Service Program (SFSP) during a COVID-19 related school closure to serve meals in a non-congregate setting.

TX-2 Waiver: TDA was granted the flexibility to waive the requirement under 7 CFR 225.6(d)(1)(iv) that requires meals to be offered at non-school sites during an unanticipated school closure. The waiver allows sites operating SFSP to serve meals at school sites during the COVID-19 related school closures.

TX-3 Waiver: TDA was granted the flexibility to waive the requirement under USDA's Food and Nutrition Service (FNS) Instruction 786-8 (June 6, 1988) to serve and consume meals on school or school-related premises and to not reimburse school meals given to children to take home. The waiver allows sites operating Seamless Summer Option (SSO) during a COVID-19 related school closure to serve meals in a non-congregate setting.

TX-4 Waiver: TDA was granted the flexibility to waive the requirement under Section 13(c)(1) of the National School Lunch Act requiring meals served to children not in school during an unanticipated school closure to only serve meals at non-school sites. The waiver allows sites operating SSO to serve meals at school sites during the COVID-19 related school closure.

TX-5 Waiver: TDA was granted the flexibility to waive the requirement under 7 CFR 225.7(d) and USDA Memo SP-04-2020, CACFP 03-2020-Meal Service During Unanticipated School Closures, requiring TDA to monitor SFSP operators that serve meals during unanticipated school closures. The waiver gives TDA the discretion to postpone or waive on-site state monitoring requirements of SFSP operators serving meals during COVID-19 related school closures if the conditions in the area are at high risk for infection.

TX-6 Waiver: TDA was granted the flexibility to waive the requirement under Policy Memo FD-079 (revised) that food packages must not be distributed retroactively. The waiver allows local agencies to deliver a previous month's package in the current month.

TX 7 Waiver: TDA was granted the flexibility to waive meal pattern requirements under 7 CFR 210.10, 7 CFR 220.8, 7 CFR 210.10, and 7 CFR 225.16. The waiver gives TDA the discretion to waive meal pattern requirements in cases where (1) food supply was affected in COVID-19 impacted areas to a degree that specific meal components could not be procured by program operators; (2) access to food vendors (such as local grocery stores) is hindered, requiring operators to temporarily use whatever is in their inventory; and/or (3) operators are implementing an approved grab-and-go service (with approved non-congregate waiver) where available non-perishable meal items do not meet the full meal pattern requirements for a reimbursable meal. TDA will grant this waiver on a case-by-case basis.

TX-8 Waiver: TDA was granted the flexibility to waive the requirement in 7 CFR 226.17a(b)(ii and iii) that requires a site operating Child and Adult Care Food Program (CACFP) At-Risk to have an after-school care program with organized, regularly scheduled activities. The waiver allows sites operating CACFP At-Risk during a COVID-19 related school closure to waive the enrichment activity requirement and serve meals in a non-congregate setting.

TX-9 Waiver: TDA was granted the flexibility to waive the major local agency responsibility to issue foods to participants in accordance with the established food package guide rates as required under 7 CFR 247.5(c)(4). The waiver allows TDA to allow local agencies to issue food packages to participants for the Commodity Supplemental Food Program (CSFP) without the cheese component.

TX-11 Waiver: TDA was granted the flexibility to waive the following requirements: 7 CFR 249.9(f)(4) which requires the School Food Authority (SFA) to indicate its intention to operate the Community Eligibility Provision (CEP) in the following school year by June 30; 7 CFR 245.9(f)(5) which requires the SFA to submit its identified student percentage (ISP) for each site to the state agency by April 15; 7 CFR 245.9(f)(6) which requires TDA to notify the SFAs about possible CEP eligibility sites by April 15; and 7 CFR 245.9(f)(7) which requires TDA to provide information on its website about possible CEP eligibility for sites and provide notice to USDA of the information posted. The waiver gives TDA the authority to allow all SFAs across Texas the flexibility to extend the following timeline for CEP reporting and notifications as follows: (1) SFAs electing CEP may calculate their ISP using data drawn any time between April 1, 2020, and June 30, 2020; (2) SFAs must submit the required CEP Report (normally due by March 20) to TDA by June 15, 2020; (3) TDA must notify SFAs of district-wide and site eligibility for CEP by June 15, 2020.; (3) TDA must post the list of possible CEP eligible districts and sites on its website by June 30, 2020; and (4) by August 31, 2020, all SFAs intending to operate CEP will notify the state agency of their intention to operate the program in SY 2020-2021.

TX-12 Waiver: TDA was granted three waivers as part of this request.

--Food and Nutrition Service (FNS) waived National School Lunch Program (NSLP)/School Breakfast Program (SBP)/SSO SFA on-site monitoring requirements included in 7 CFR 210.8, 210.18, and 220.8(h).

--FNS waived for all SFSP sponsoring organizations the on-site monitoring requirements included in 7 CFR 225.15(d).

--FNS waived for all CACFP sponsoring organizations the on-site monitoring requirements included in 7 CFR 226.16(d)(4)(iii), which stipulated that sponsoring organizations in CACFP must review each facility three times each year. CACFP sponsors now have the following flexibilities under this waiver: (1) complete two reviews per year; (2) only one of the facility reviews must be unannounced; (3)

observation of a meal service is no longer required in an unannounced review; and (4) more than six months may elapse between reviews.

TX 13 Waiver: TDA was granted the flexibility to waive FNS Instruction 786-8 (June 6, 1988) which requires that meals reimbursed under the programs be served and consumed as part of the school program, on school or school-related premises. Therefore, school meals given to children to take home are not reimbursable. The waiver allows SFAs that consider school to be in session (via online learning or modified hours) and wish to continue offering National School Lunch Program (NSLP) and School Breakfast Program (SBP) to serve breakfast and lunch in a non-congregate setting.

TX-14 Waiver: TDA was granted the flexibility to allow COVID-19 related operations under all child nutrition programs to distribute meals to a parent or guardian to take home to their children. TDA has developed a plan for ensuring that program operators are able to maintain accountability and program integrity, and program operators must indicate their intent to TDA to operate under this waiver.

TX-15 Waiver: TDA was granted the flexibility to waive the following requirements:

--7 CFR 225.14(c)(3) - No applicant sponsor shall be eligible to participate in the program unless it will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist.

--7 CFR 225.6(c)(2)(i)(G) State agency responsibilities, Content of sponsor application

--7 CFR 225.6(c)(3)(i)(B) State agency responsibilities, Content of sponsor application

--7 CFR 225.6(d)(1)(i) State agency responsibilities, Approval of sites

--7 CFR 225.16(b)(4) Meal service requirements, Sites which serve children of migrant families

--Area eligibility guidance as described in SP 08-2017, CACFP 04-2017, SFSP 03-2017 Area Eligibility in Child Nutrition Programs (December 1, 2016)

This waiver allows SFSP and SSO sponsors in good standing to operate open sites in areas where poor economic conditions do not exist if approved by TDA on a case-by-case basis consistent with the TDA-developed State plan.

TX-Waiver 18: TDA was granted the flexibility to waive the meal service time requirement in 7 CFR 226.6(k). The waiver allows CACFP operators to also distribute meals over multiple days (up to 7 days).

TX-Waiver 25: TDA submitted this waiver to allow SFSP/SSO sites to operate on weekends and holidays as allowed per regulation during standard summer operations but had been suspended per USDA guidance during unanticipated closures. FNS granted program operators licensed to operate on weekends and holidays the flexibility to serve on those days with approval from TDA.

TRD-202001564
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: April 23, 2020

♦ ♦ ♦

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Consumers Water Inc.;* Cause No. D-1-GN-16-000711; in the 98th Judicial District Court, Travis County, Texas.

Background: The State initiated the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ"), alleging Defendant Consumers Water Inc. failed to comply with TCEQ drinking water regulations at eleven public water systems: Joy Village Subdivision, Spring Forest Subdivision, Porter Terrace Subdivision, and Lakewood Colony Subdivision in Montgomery County, Texas; and Springmont Subdivision, Urban Acres Subdivision, Huffman Heights Subdivision, Highland Ridge Subdivision, Tall Cedars Mobile Home Subdivision, Highland Mobile Home Subdivision, and Meadowlake Estate Subdivision in Harris County, Texas. Specifically, the violations concern Consumers Water Inc.'s failure to maintain storage tanks and adequate storage tank capacity; failure to maintain service pumps and adequate service pumps capacity; failure to maintain emergency power; failure to secure electrical wiring; failure to maintain distribution map; failure to maintain well calibration records; failure to maintain tank inspection records; and failure to maintain facilities. In 2019, Consumers Water Inc. sold the water systems and no longer operates or owns any water systems in Texas.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award of civil penalties and attorney's fees to the State in the amount of $50,000 and $10,000 respectively.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202001664
Lesley French
General Counsel
Office of the Attorney General
Filed: April 27, 2020

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Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Texas Rain Holding Company, Inc.;* Cause No. D-1-GN-19-001582 in the 261st Judicial District Court, Travis County, Texas.

Background: The State initiated the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") and the Public Utility Commission of Texas ("PUC") against Defendant Texas Rain Holding Company, Inc. ("Defendant") for its failure to comply with PUC and TCEQ drinking water regulations at a public water system in Parker County, Texas. Specifically, the violations concern Defendant's failure to maintain required chlorine residual, well capacity, wellhead sealing at the wells, electrical wiring, records of pressure and ground storage tanks inspections, and failure to collect proper bacteriological sampling. Since at least July 2019, Defendant has no longer been operating the water system.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award of $60,000 in civil penalties and $5,000 in attorney's fees to be paid to the State within 30 days after the Court enters the judgment.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Copies may be obtained in by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Ekaterina DeAngelo, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202001708
Lesley French
General Counsel
Office of the Attorney General
Filed: April 29, 2020

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - March 2020

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period March 2020 is $41.99 per barrel for the three-month period beginning on December 1, 2019, and ending February 29, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of March 2020, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period March 2020 is $1.14 per mcf for the three-month period beginning on December 1, 2019, and ending February 29, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2020, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of March 2020 is $30.45 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of March 2020, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of March 2020 is $1.73 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of March 2020, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202001678
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: April 27, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/04/20 - 05/10/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/04/20 - 05/10/20 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.

TRD-202001691
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 28, 2020

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning the 2020-2021 Charter School Program High-Quality Replication Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-123 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act of 2015 (ESSA), Title IV, Part C, Expanding Opportunity Through Quality Charter Schools; Texas Education Code (TEC), Chapter 12; and 19 Texas Administrative Code (TAC) Chapter 100, Subchapter AA, and will be contingent on federal appropriations.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-20-123 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and are one of the following: (1) an open-enrollment charter school campus designated by the commissioner of education as a high-quality campus for the 2020-2021 school year; or (2) a campus charter school authorized by the local board of trustees pursuant to TEC, Chapter 12, Subchapter C, on or before April 30, 2020, that is designed to repli-

cate a new high-quality charter school campus based on the educational model of an existing high-quality charter school and that submits all required documentation as stated in RFA #701-20-123.

Charters submitting an application for a High-Quality Campus Designation for the 2020-2021 school year by May 1, 2020, are considered eligible to apply for the grant. However, the commissioner must designate the campus as a high-quality campus prior to the charter receiving grant funding, if awarded.

A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee.

Applicants that opened a new high-quality charter school campus based on the educational model of an existing high-quality charter school for the 2019-2020 school year and have not received Charter School Program High-Quality Replication Grant funding for this charter school campus may apply for grant funding.

Any charter school campus that does not open by the eighteenth month after having been awarded grant funds will be required to forfeit any remaining grant funds and may be required to reimburse any expended amounts to TEA.

Description. The purpose of this grant program is to is to support the growth of high-quality charter schools in Texas, especially those focused on improving academic outcomes for educationally disadvantaged students.

Dates of Project. Applicants should plan for a starting date of no earlier than July 1, 2020, and an ending date of no later than August 31, 2021.

Project Amount. Approximately $29.9 million is available for funding the 2020-2021 Charter School Program High-Quality Replication Grant. It is anticipated that approximately 34 grants will be awarded up to $900,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the Search Options box, select the name of the RFA from the drop-down list. Scroll down to the Application and Support Information section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to CharterSchools@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than May 19, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by May 26, 2020. In the Search Options box, select the name of the RFA from the drop-down list. Scroll down to the Application and Support Information section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to the following email address: competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), Monday, June 8, 2020, to be considered eligible for funding.

TRD-202001701
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 29, 2020

♦ ♦ ♦

Request for Applications Concerning the 2020-2021 Public Charter School Program Start-Up Grant (Subchapter C)

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-122 is authorized by Public Law 107-110, Elementary and Secondary Education Act of 1965 (ESEA), as amended by No Child Left Behind Act of 2001 (NCLB), Title V, Part B, Subpart 1, and Texas Education Code (TEC), Chapter 12, and will be contingent on federal appropriations.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-20-122 from eligible applicants, which include open-enrollment charter schools that meet the federal definition of a charter school, have never received funds under this grant program, and are one of the following:(1) a campus charter school authorized by the local board of trustees in Boles Independent School District (ISD), Dallas ISD, Edgewood ISD, Fort Bend ISD, Fort Worth ISD, Galveston ISD, Longview ISD, Lubbock ISD, Marshall ISD, Palestine ISD, Premont ISD, Roscoe Collegiate ISD, or San Antonio ISD pursuant to TEC, Chapter 12, Subchapter C, on or before April 30, 2020, that submits all required documentation as stated in this RFA; or (2) a campus charter school authorized by the local board of trustees in any school district not previously listed pursuant to TEC, Chapter 12, Subchapter C, on or before April 30, 2020, that submits all required documentation as stated in RFA #701-20-122.

A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee.

Any campus charter school authorized by the local board of trustees in any school district not previously listed is considered eligible to apply for the grant. However, the US Department of Education must approve the school district's charter authorizing policy prior to the charter receiving grant funding, if awarded. Any charter school that does not open, after having been awarded grant funds, may be required to forfeit any remaining grant funds and may be required to reimburse any expended amounts to TEA.

Description. The purpose of the 2020-2021 Public Charter School Program Start-Up Grant (Subchapter C) is to provide financial assistance for the planning, program design, and initial implementation of charter schools and expand the number of high-quality charter schools available to students.

Dates of Project. This grant program will be implemented primarily during the 2020-2021 school year. Applicants should plan for a starting date of no earlier than July 1, 2020, and an ending date of no later than February 26, 2021.

Project Amount. Approximately $5.6 million is available for funding this grant program. It is anticipated that approximately seven grants

will be awarded up to $800,000. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the Search Options box, select the name of the RFA from the drop-down list. Scroll down to the Application and Support Information section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to CharterSchools@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Tuesday, May 19, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, May 26, 2020. In the Search Options box, select the name of the RFA from the drop-down list. Scroll down to the Application and Support Information section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be submitted to the following email address: competitivegrants@tea.texas.gov. Applications must be received no later than 11:59 p.m. (Central Time), Monday, June 8, 2020, to be considered eligible for funding.

TRD-202001700
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 29, 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 **June 9, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 9, 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: CARBINE KILO INC dba Gina's Kwik Pantry; DOCKET NUMBER: 2019-1714-PST-E; IDENTIFIER: RN102351103; LOCATION: Granger, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition; PENALTY: $10,667; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: City of Fairfield; DOCKET NUMBER: 2019-1337-MWD-E; IDENTIFIER: RN101607778; LOCATION: Fairfield, Freestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1), TWC, §26.0301(a) and (c), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010168002, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators; 30 TAC §§305.125(1), 319.6 and 319.9(d) and TPDES Permit NumberWQ0010168002, Monitoring and Reporting Requirements Number 1, by failing to assure the quality of all measurements through the use of blanks, standards, duplicates, and spikes; 30 TAC §305.125(1) and (5) and TPDES Permit NumberWQ0010168002, Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (19) and TPDES Permit Number WQ0010168002, Definitions and Standard Permit Conditions Numbers 2.c and 2.e, by failing to submit accurate discharge monitoring reports; 30 TAC §317.3(a), by failing to secure the lift station in an intruder-resistant manner; 30 TAC §317.4(a)(8) and §317.7(i), by failing to provide atmospheric vacuum breakers on all potable water washdown hoses; and 30 TAC §317.4(b)(4), by failing to dispose of all screenings and grit in an approved manner; PENALTY: $41,284; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $33,028; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Manor; DOCKET NUMBER: 2019-0260-MWD-E; IDENTIFIER: RN101610228; LOCATION: Manor, Travis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012900001, Monitoring and Reporting Requirements Number 7.c, by failing to submit a noncompliance notification for any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0012900001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and §305.126(a) and TPDES Permit Number WQ0012900001, Operational Requirements Number 8.a, by failing to obtain necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities whenever the flow reaches 90% of the permitted daily average or annual flow for three consecutive months; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0012900001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0012900001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0012900001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, resulting in an unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $54,938; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $43,951; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: City of Petersburg; DOCKET NUMBER: 2019-1548-MSW-E; IDENTIFIER: RN101453942; LOCATION: Petersburg, Hale County; TYPE OF FACILITY: citizens' collection station; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: $9,150; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2019-1681-AIR-E; IDENTIFIER: RN100211408; LOCATION: Coyanosa, Pecos County; TYPE OF FACILITY: gas plant; RULES VIOLATED: 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), Federal Operating Permit Number O2546, General Terms and Conditions and Special Terms and Conditions Number 1.A, and Texas Health and Safety Code, §382.085(b), by failing to record the daily flare observations; PENALTY: $267; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: Grand Harbor Water Supply Corporation; DOCKET NUMBER: 2019-1724-PWS-E; IDENTIFIER: RN104497946; LOCATION: Runaway Bay, Wise County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q), by failing to institute special precautions, protective measures, and boil water notices within 24 hours in the event of low distribution pressures or of becoming aware of conditions which indicate that the potability of the drinking water supply has been compromised; PENALTY: $205; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Hanson Aggregates LLC; DOCKET NUMBER: 2019-1680-WQ-E; IDENTIFIER: RN103038592; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: an aggregate production operation; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial waste into or adjacent to any water in the state; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Harris County Municipal Utility District 304; DOCKET NUMBER: 2019-1678-PWS-E; IDENTIFIER: RN102975877; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallon per minute per connection; 30 TAC §290.46(k), by failing to obtain approval from the executive director for the use of interconnections; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the systems facilities and equipment; PENALTY: $520; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: JRM Water L.L.C.; DOCKET NUMBER: 2019-1710-PWS-E; IDENTIFIER: RN102683562; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallon per minute per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 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 §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11548 for calendar years 2015 through 2018; PENALTY: $217; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: LEGEND OF TROY CORPORATION dba Big Reds; DOCKET NUMBER: 2019-1687-PST-E; IDENTIFIER: RN106493489; LOCATION: Troy, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated underground storage tank (UST) at the facility according to the UST registration and self-certification form; 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; 30 TAC §334.42(i) and TWC, 26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.48(c), §334.50(b)(2)(A) and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to conduct effective manual or automatic inventory control procedures for the UST system, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.48(h)(1)(B)(i), by failing to conduct annual sump

integrity inspections for damage, leaks or releases to the environment; PENALTY: $6,710; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Motiva Chemicals LLC f/k/a Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2019-1289-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical production; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions Number 1, Federal Operating Permit Number O1317, General Terms and Conditions and Special Terms and Conditions Number 24, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $19,238; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,695; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Ronald Hines dba Sixth Street Mini Storage; DOCKET NUMBER: 2019-0582-MSW-E; IDENTIFIER: RN110690138; LOCATION: Irving, Dallas County; TYPE OF FACILITY: public self-storage business; RULES VIOLATED: 30 TAC §326.23(f) and §326.53(b)(11), by failing to store, process, or deposit untreated medical waste only at a facility that has been authorized by the commission to accept untreated medical waste; and 30 TAC §326.53(a), by failing to submit a completed registration form to the executive director at least 60 days prior to transporting medical waste; PENALTY: $17,982; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: SBM Farms, LLC; DOCKET NUMBER: 2019-1727-AIR-E; IDENTIFIER: RN110865532; LOCATION: Ector, Ector County; TYPE OF FACILITY: rock crushing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(14) COMPANY: SIMPLY AQUATICS, INCORPORATED; DOCKET NUMBER: 2019-1684-PWS-E; IDENTIFIER: RN101651925; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's Well Number 2; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away from the wellhead at not less than 0.25 inch per foot; 30 TAC §290.42(m) and §290.43(e), by failing to provide an intruder-resistant fence around each treatment plant, potable water storage tank, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.44(a)(4), by failing to install water transmission and distribution lines below the frost line and in no case less than 24 inches below the ground surface; 30 TAC §290.45(b)(1)(C)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage 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(f)(2) and (3)(E)(iv), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director (ED) upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; and 30 TAC §290.46(q)(1), by failing to provide a copy of the boil water notice (BWN) to the ED within 24 hours after issuance by the facility and a signed Certificate of Delivery to the ED within ten days after issuance of the BWN; PENALTY: $10,024; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Superior Silica Sands LLC; DOCKET NUMBER: 2019-1672-AIR-E; IDENTIFIER: RN100846443; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: sand plant; RULES VIOLATED: 30 TAC §101.20(1) and §116.115(c), 40 Code of Federal Regulations (CFR) §60.8(a), New Source Review (NSR) Permit Number 150868, Special Conditions (SC) Number 4.A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct a performance test no later than 180 days after initial startup; 30 TAC §101.20(1) and §116.115(c), 40 CFR §60.8(a) and (f)(1), NSR Permit Number 150868, SC Number 4.A, and THSC, §382.085(b), by failing to conduct a performance test consisting of three separate runs using the applicable test method, and failing to conduct a performance test no later than 180 days after initial startup; and 30 TAC §101.20(1) and §116.115(c), 40 CFR §60.8(f)(1) and §60.732(a), NSR Permit Number 150868, SC Number 4.B, and THSC, §382.085(b), by failing to comply with the emissions limit; PENALTY: $20,500; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2019-1601-AIR-E; IDENTIFIER: RN100238716; LOCATION: Chico, Wise County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 84108, Special Conditions Number 1, Federal Operating Permit Number O3181, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $25,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $12,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2019-0977-AIR-E; IDENTIFIER: RN100221589; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §115.725(f)(1) and §122.143(4), Federal Operating Permit Number O1932, General Terms and Conditions and Special Terms and Conditions Number 1.A, and Texas Health and Safety Code, §382.085(b), by failing to prevent the operation of a single flare in highly reactive volatile organic compound service for more than 720 hours in any 12 consecutive months; PENALTY: $26,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Thorntree Golf, LLC; DOCKET NUMBER: 2019-1690-WR-E; IDENTIFIER: RN110847977; LOCATION: Desoto, Dallas County; TYPE OF FACILITY: golf course; RULES

VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: TRI-CON, INCORPORATED dba Exxpress Mart 20; DOCKET NUMBER: 2019-1713-PST-E; IDENTIFIER: RN101862795; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $6,900; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Undine Texas Environmental, LLC; DOCKET NUMBER: 2019-1663-MWD-E; IDENTIFIER: RN101522464; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014163001, Permit Conditions Number 2.d, by failing to prevent an unauthorized discharge of sludge into or adjacent to any water in the state; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014163001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0014163001, Monitoring and Reporting Requirements Number 7.a, by failing to timely report an unauthorized discharge orally to the Regional Office within 24 hours of becoming aware of the noncompliance, and in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: $14,813; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Whitestone Business, Incorporated dba Park N Sak II; DOCKET NUMBER: 2019-1682-PST-E; IDENTIFIER: RN102462660; LOCATION: Cedar Park, 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 for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202001684
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2020

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Enforcement Orders

An agreed order was adopted regarding International Paper Company, Docket No. 2018-0719-AIR-E on April 28, 2020, assessing $2,925 in administrative penalties with $585 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 GIRL SCOUTS OF TEXAS OKLAHOMA PLAINS, INC., Docket No. 2019-0412-PWS-E on April 28, 2020, assessing $129 in administrative penalties with $25 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 Marion J. Smith dba Town North Village Water System and Cox Addition Water System and Town North Estates, Docket No. 2019-0430-PWS-E on April 28, 2020, assessing $3,238 in administrative penalties with $646 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 RUBI & SONS STORE INC dba Food Mart Shell, Docket No. 2019-0717-PST-E on April 28, 2020, assessing $2,813 in administrative penalties with $562 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 S & S CABINET SHOP, INC., Docket No. 2019-0747-WQ-E on April 28, 2020, assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KOLKHORST PETROLEUM COMPANY, Docket No. 2019-0819-PST-E on April 28, 2020, assessing $3,021 in administrative penalties with $604 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 Martech, LLC, Docket No. 2019-0996-AIR-E on April 28, 2020, assessing $5,438 in administrative penalties with $1,087 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 Victor Lopez, Docket No. 2019-1023-MSW-E on April 28, 2020, assessing $1,312 in administrative penalties with $262 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Devine, Docket No. 2019-1024-MWD-E on April 28, 2020, assessing $7,000 in administrative penalties with $1,400 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 PETRO-Q CORP dba Q Stop, Docket No. 2019-1063-PST-E on April 28, 2020, assessing $3,000 in administrative penalties with $600 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 MITIENDA INCORPORATED dba Rundberg Grocery, Docket No. 2019-1130-PST-E on April 28, 2020, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MRD Real Estate Investments, LLC, Docket No. 2019-1149-PWS-E on April 28, 2020, assessing $155 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 Chris Harp Construction Limited Liability Company, Docket No. 2019-1175-AIR-E on April 28, 2020, assessing $4,779 in administrative penalties with $955 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 MISSION INDEV, LLC, Docket No. 2019-1181-PWS-E on April 28, 2020, assessing $100 in administrative penalties with $20 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 City of Meadow, Docket No. 2019-1195-MSW-E on April 28, 2020, assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Copano Processing LLC, Docket No. 2019-1239-AIR-E on April 28, 2020, assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shumaker Enterprises, Inc., Docket No. 2019-1244-PWS-E on April 28, 2020, assessing $229 in administrative penalties with $183 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, 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 Jose O. Beltran and Maria A. Beltran dba 1017 Cafe, Docket No. 2019-1321-PWS-E on April 28, 2020, assessing $153 in administrative penalties with $30 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 Frio LaSalle Pipeline, LP, Docket No. 2019-1397-AIR-E on April 28, 2020, assessing $4,801 in administrative penalties with $960 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 ALEEZEH INVESTMENT INC, Docket No. 2019-1425-PWS-E on April 28, 2020, assessing $225 in administrative penalties with $45 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 City of Jewett, Docket No. 2019-1509-MWD-E on April 28, 2020, assessing $4,125 in administrative penalties with $825 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Potosi Water Supply Corporation, Docket No. 2019-1541-PWS-E on April 28, 2020, assessing $526 in administrative penalties with $105 deferred. Information concerning any aspect of this order may be obtained by contacting Jee Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding DARRYL R SMALL, Docket No. 2019-1715-OSS-E on April 28, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation 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.

A field citation was adopted regarding Abstract Contractors LLC, Docket No. 2020-0027-WQ-E on April 28, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Bill McCaa, Docket No. 2020-0030-WQ-E on April 28, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation 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.

A field citation was adopted regarding JEREMY & WILL INC, Docket No. 2020-0054-WQ-E on April 28, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kyle Paul Construction LLC, Docket No. 2020-0055-WQ-E on April 28, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Isaiah Martinez, Docket No. 2020-0094-WQ-E on April 28, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding RIVERSIDE HOMEBUILDERS, LTD, Docket No. 2020-0111-WQ-E on April 28, 2020, assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Com-

mission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202001702
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 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 **June 9, 2020.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 9, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Heidi Fensterbush dba Country View MHP and Michael D Fensterbush dba Country View MHP; DOCKET NUMBER: 2018-1677-PWS-E; TCEQ ID NUMBER: RN101278190; LOCATION: 7506 North County Road 1540, Unit 23, Shallowater, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Healthy and Safety Code (THSC), §341.0315(c) and 30 TAC §290.108(f)(1), by failing to comply with the maximum contaminant level (MCL) of 15 milligrams per liter (mg/L) for uranium based on the running annual average; THSC, §341.0315(c) and 30 TAC §290.106(f)(3)(C), by failing to comply with the MCL of 0.010 mg/L for arsenic based on the running annual average; THSC, §341.0315(c) and 30 TAC §290.106(f)(3)(C), by failing to comply with the MCL of 4.0 mg/L for fluoride based on the running annual average; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to comply with the MCL for uranium; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery to the ED regarding the failure to comply with the MCLs for arsenic and fluoride; 30 TAC §290.117(i)(6) and (j), by failing to provide consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the July 1, 2017 through December 31, 2017 monitoring period; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service Fees and associated late fees for TCEQ Financial Administration Account Number 91520247; PENALTY: $989; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: Henry Rodriguez dba Gulf Coast Septic Waste; DOCKET NUMBER: 2018-0773-SLG-E; TCEQ ID NUMBER: RN106337926; LOCATION: 31099 Farm-to-Market Road 1575, Los Fresnos, Cameron County; TYPE OF FACILITY: registered sludge transporter; RULES VIOLATED: 30 TAC §312.145(a), by failing to maintain accurate records of each deposit in the form of a trip ticket or similar documentation approved by the executive director (ED); and 30 TAC §312.145(b)(4), by failing to submit to the ED an accurate annual summary of sludge transport activities; PENALTY: $135,493; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Marsons HV Store, LLC dba BAR T TRAVEL CENTER; DOCKET NUMBER: 2019-0843-PST-E; TCEQ ID NUMBER: RN106131725; LOCATION: 601 State Highway 75 North, Huntsville, Walker County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(B), by failing to monitor the underground storage tanks which were installed after January 1, 2009 for releases at a frequency of at least once every 30 days using interstitial monitoring. Specifically, the diesel UST was installed on January 1, 2013 and the respondent was not monitoring it using interstitial monitoring; PENALTY: $6,750; STAFF ATTORNEY: Christopher Mullins, Litigation Division, MC 175, (512) 239-0141; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: UNITED PARCEL SERVICE, INC.; DOCKET NUMBER: 2019-0368-PST-E; TCEQ ID NUMBER: RN100699495; LOCATION: 1300 East Northside Drive, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling service station; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery. Specifically, monthly inventory control records for the unleaded UST for January and February of 2018, and June through August of 2018 indicated suspected releases that were not reported; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery. Specifically, monthly inventory control records for the unleaded UST for January and February of 2018, and June through August of 2018 indicated suspected releases that were not investigated; PENALTY: $34,552; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202001685

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2020

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 9, 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 June 9, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Mesquite Tranquility, LLC; DOCKET NUMBER: 2019-0649-PWS-E; TCEQ ID NUMBER: RN109535013; LOCATION: 1104 Lechuguilla near Alpine, Brewster County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to extend the well casing for Well Number One a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block when provided; 30 TAC §290.41(c)(3)(J), by failing to provide Well Number One with a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot around the wellhead; 30 TAC §290.41(c)(3)(K), by failing to seal the wellheads by a gasket or sealing compound and properly vent the wellheads to prevent the possibility of contaminating the well water for Well Numbers One and Two; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of each well pump prior to any treatment for Well Number One; 30 TAC §290.41(c)(3)(N), by failing to provide flow-measuring devices for Well Numbers One and Two to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(O), by failing to protect Well Numbers One and Two by intruder-resistant fences, the gates of which are provided with locks or to enclose Well Numbers One and Two in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers; 30 TAC §290.42(e)(2), by failing to disinfect all groundwater prior to distribution and in a manner consistent with the requirements of 30 TAC §290.110; 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution container and pump for Well Number Two in a secure enclosure to protect them from adverse weather conditions and vandalism; 30 TAC §290.42(j), by failing to ensure that all chemicals used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.42(l), by failing to compile and keep an up-to-date thorough plant operations manual for operator review and reference; 30 TAC §290.43(c) and (c)(2) - (4), by failing to cover, design, fabricate, erect, test, and disinfect the facility's two ground storage tanks (GSTs) in strict accordance with current American Water Works Association standards and to provide the facility's two GSTs with the minimum number, size, and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators, and other appurtenances; 30 TAC §290.43(d)(2), by failing to provide the pressure tank for Well Number Two with a pressure release device; 30 TAC §290.43(e), by failing to install the facility's two GSTs in a lockable building that is designed to prevent intruder access or enclose the facility's two GSTs by an intruder-resistant fence with lockable gates; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two GSTs annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(v), by failing to securely install all water system electrical wiring in compliance with a local or national electrical code; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.110(e)(4)(B), by failing to retain the Disinfection Level Quarterly Operating Reports and provide a copy if requested by the ED; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $3,859; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: RACE TRIP, LLC dba Hill Top Food Mart; DOCKET NUMBER: 2018-1387-PST-E; TCEQ ID NUMBER: RN101436541; LOCATION: 2704 Fort Worth Highway, Hudson Oaks, Parker County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all USTs record-keeping requirements are met; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; Texas Health and Safety Code, §382.085(b) and 30 TAC §115.225, by

failing to comply with Stage I vapor recovery testing requirements; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $10,030; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Seng Phet Souimaniphanh dba T L Water Jones; DOCKET NUMBER: 2019-0275-MLM-E; TCEQ ID NUMBER: RN101196905; LOCATION: approximately one mile North of Farm-to-Market Road 3433 and Farm-to-Market Road 718 near Newark, Wise County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter (mg/L) of free chlorine throughout the distribution system at all times; THSC, §341.0315(c) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class "D" or higher license; 30 TAC §290.46(q)(1) and (5), by failing to issue a boil water notification to customers of the facility within 24 hours of a low disinfectant residual using the prescribed format as specified in 30 TAC §290.47(c); 30 TAC §290.46(f)(2) and (3)(A)(i)(lll), (ii), (iii) and (E)(iv), by failing to maintain water works operations and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.40(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedure and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(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; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks annually; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.43(d)(2), by failing to provide all pressure tanks with an easily readable pressure gauge; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(B)(ii), by failing to provide a total storage capacity of 200 gallons per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(B)(iii), by failing to provide two or more service pumps with a total capacity of 2.0 gallons per minute (gpm) per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(B)(i), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.43(c), by failing to ensure that all potable water storage facilities are covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence or building around each water treatment plant, well unit, potable water storage tanks, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; 30 TAC §290.44(d) and §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum pressure of 20 psi during emergencies such as firefighting; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 mg/L of free chlorine throughout the distribution system at all times; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 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 submit a Disinfectant Level Quarterly Operating Report (DLQOR) and regarding the failure to collect lead and copper tap samples; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the ED by the tenth day of the month following the end of each quarter; 30 TAC §290.117(c)(2)(A), (h), and (i)(l), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the 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 for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92490018 for Fiscal Years 2011 through 2014 and 2017 through 2019; and TWC, §11.1272(c) and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by retail public water supplier; PENALTY: $22,899; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202001686
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2020

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Notice of Public Comment Period on Proposed Revisions to 30 TAC Chapter 336

The Texas Commission on Environmental Quality (commission) proposes to amend §336.1310 of 30 Texas Administrative Code (TAC) Chapter 336, Radioactive Substance Rules.

The proposed rulemaking would lower the minimum rate for nonparty generators and the maximum rate for party state generators, resulting in potentially lower disposal costs for both party and nonparty generators.

Written comments may be submitted to Andreea Vasile MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2020-009-336-WS. The comment period closes June 9, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Hans Weger, Radioactive Materials Division, (512) 239-6465.

TRD-202001719
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 30, 2020

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Notice of Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40307

Application. Diversified Waste Management, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40307, to construct and operate a Medical Waste Processing Facility. The proposed facility, Diversified Waste Management, Inc. will be located 13511 Indian Hill Road, Amarillo, Texas 79124, in Potter County. The Applicant is requesting authorization to store, treat, and transfer medical waste, trace chemotherapy waste, and non-hazardous pharmaceutical waste. 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://arcg.is/018j9S. For exact location, refer to application.

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.

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application. The executive director is not required to file a response to comments.

The Public Meeting is to be held:

Thursday, May 28, 2020 at 7:00 p.m.

Members of the public may listen to the meeting by calling, toll free, (631) 992-3221 and entering access code 330-555-371. Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 419-628-811. Those without internet access may call (512) 239-1201 before the meeting begins for assistance in accessing the meeting and participating telephonically.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

Information. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the registration application or the registration process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The registration application is available for viewing and copying at the Southwest Amarillo Public Library located at 6801 Southwest 45th Avenue, Amarillo, Texas 79109 and at the Northwest Amarillo Public Library located at 6100 SW 9th Avenue, Amarillo, Texas 79106 and may be viewed online at https://www.gdsassociates.com/txprojects. Further information may also be obtained from Diversified Waste Management, Inc. at the address stated above or by calling Mr. Brandon Brown, Owner, at (806) 371-0120.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-202001699
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2020

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Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft April 2020 Update to the WQMP for the State of Texas.

Download the draft April 2020 WQMP Update at *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Please periodically check the following website for updates, in the event the TCEQ Library is closed due to COVID-19 restrictions: *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html.*

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval.

For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m., June 9, 2020.**

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali Texas Commission on Environmental Quality Water Quality Division, MC 150 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 **or** emailed to Nancy Vignali at *Nancy.Vignali@tceq.texas.gov,* but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-202001689
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 28, 2020

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2020

Craig Adams, Spring Branch AFT Committee on Political Education, 10801 Hammerly Blvd., Ste. 212, Houston, Texas 77043

Kyra D. Armstrong, Fiscal Intelligence Representing the State of Texas, 164 Cornelia St., Brooklyn, New York 11221

Charles Blain, Texas Liberty Law, 1615 Hermann Dr. #1437, Houston, Texas 77004

Janice L. Burkholder, Pathfinders Republican Women's Club, 21 Towering Pines Dr., The Woodlands, Texas 77381

Sajjad I. Burki, Pakistan American Council of Texas Inc., 7207 Regency Square Blvd., Ste. 247, Houston, Texas 77036

Francisco "Quico" Canseco, Real Texans PAC, 19 Jackson Ct., San Antonio, Texas 78230

Wendy R. Davis, Wendy R. Davis for Governor, Inc., P.O. Box 1039, Fort Worth, Texas 76101

Harold V. Dutton Jr., Texas Legislative Black Caucus, P.O. Box 2910 Room 3N.5, Austin, Texas 78768

Gilbert Enriquez, Common Sense Government Political Action Committee, 3025 S. Sugar Road, Edinburg, Texas 78539

Salvador Espino Jr., Adelante Contigo PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Espino Leadership PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Friends of Sal Espino Jr. PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Texas Democrats For Life, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Democratic Municipal Officials PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Fort Worth Leadership PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Esto Dux Action Fund, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., United By Faith PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Christians For Radical Discipleship PAC, 1205 N. Main St., Fort Worth, Texas 76164

Salvador Espino Jr., Texans For Criminal Justice Reform PAC, 1205 N. Main St., Fort Worth, Texas 76164

Michael Franks, Wharton County GOP PAC, 20230 Kings Camp Dr., Katy, Texas 77450-4322

Refugio Gonzales, Texas Health & Science PAC, 8014 Clearwater Crossing, Humble, Texas 77396

Bobby Gutierrez, Partners for a Better Bryan - Political Action Committee, 1401 S. Texas Ave., Bryan, Texas 77802

Philip A. Harris, Dark Money PAC, 7001 Boulevard 26, Ste. 331, North Richland Hills, Texas 76180

Steven B Hendershot, International Association of Fire Fighters Local #1259 Free Money Fund, 1705 Yuma Ct., League City, Texas 77573

Jose R. Hernandez Jr., Hidalgo County Sheriff's Association Political Action Committee, 903 W. Longoria Drive, Pharr, Texas 78577

Barbara Hunt, It's Time Lindsay ISD Bond 2019, P.O. Box 39, Lindsay, Texas 76250

Brandon Michael James, Generation Forward, 4700 Cromwell Dr. #5304, Kyle, Texas 78640

Angela G. Johnson, Robin J. Anderson, P.O. Box 38427, Houston, Texas 77238

Dallas S. Jones, Empower PAC, 315 W. Alabama, Ste. 103, Houston, Texas 77006

Philip R. Klein, Kids For A Better Bond, 826 Nederland Avenue, Nederland, Texas 77627

Eric Knustrom, The Texas PAC, 1122 Colorado St., Ste. 102, Austin, Texas 78701

Mary M. McAdam, Dallas Green Alliance, 5411 Monticello Avenue, Dallas, Texas 75206

Amanda M. Miller, Texas Industries, Inc. Political Action Committee, 1503 LBJ Fwy., Ste. 400, Dallas, Texas 75234

Eustacio Mireles, Building Better Communities Political Action Committee, P.O. Box 720693, McAllen, Texas 78504

Stacey MyCue, Guadalupe County Republican Women's Club, 424 N. Camp St., Seguin, Texas 78155

J. M. Phillips, Harris County African-American Deputy's Union PAC, 3333 Fannin, Ste. 103A, Houston, Texas 77004

Rachel A. Smith, College Station Association of Neighborhoods, 1203 Marsteller Ave., College Station, Texas 77840

Ward Tisdale, CAFPAC, 4701 Gillis St., Austin, Texas 78745

Monica Torres, Hidalgo Forward, 3401 Fresno Ave., Hidalgo, Texas 78557

John R. Ward, Vote Yes Gatesville 2019, P.O. Box 179, Gatesville, Texas 76528

Phillip A. Webb Jr., Red Wave Texas - Galveston County, 16318 Forest Bend Ave., Friendswood, Texas 77546

Anastasia Wilford, LPCounties, 550 San Antonio St., Jacksonville, Texas 75766

TRD-202001665
Anne Temple Peters
Executive Director
Texas Ethics Commission
Filed: April 27, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 10, 2020, to April 24, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, May 1, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, May 31, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Boat Storage Property-Port O'Connor, LLC

Location: The project site is located in the Laguna Madre at 1618 Laguna Shores Road in Corpus Christi, Nueces County, Texas

Latitude & Longitude (NAD 83): 27.656050, -97.277338

Project Description: The applicant proposes to hydraulically dredge approximately 600 cubic yards from an approximate 0.18 acre area for an access channel, marina basin, and a boat slip. The applicant also proposes to decrease the footprint to 40-foot-wide by 66.5-foot-long for an existing boat ramp (45-foot-wide by 66-foot-long). In addition the applicant will use temporary coffer dam (0.067 acre-area) to dewater the boat ramp area during repairs and upgrades and the placement of approximately 64 cubic yards (CY) of fill material (concrete) for the construction of the boat ramp. The applicant also proposes the placement of sheet pile bulkhead 6 inches seaward and backfill approximately 84 CY of fill material within a 0.005 acre area. All dredged material will be placed within an upland area.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1997-00301. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act.

CMP Project No: 20-1234-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202001707
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: April 29, 2020

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 27, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing is tentatively scheduled to be held in the HHSC Public Hearing Room at the Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

State of Disaster. In the event of a continued state of disaster related to COVID-19 and directions to limit in-person contact, this hearing may be conducted remotely with no physical entry permitted. If the hearing is conducted remotely, it will be hosted online with comments accepted online or by phone. Further guidance will be posted on the HHSC website at the link cited above.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective September 1, 2020, for the following services:

Cardiovascular System Surgery

Digestive System Surgery

Eye and Ocular Adnexa Surgery

G Codes

Physician Administered Drugs - Non-Oncology

Physician Administered Drugs - Vaccines

Proton Therapy

T Codes

Urinary System Surgery

Vision Devices

End Date Procedure Code List

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.8001, which addresses the reimbursement methodology for vision care services;

Section 355.8023, which addresses the reimbursement methodology for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS);

Section 355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

Section 355.8121, which addresses the reimbursement for ambulatory surgical centers; and

Section 355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payments rates will be made available at https://rad.hhs.texas.gov/rate-packets on or after May 12, 2020. Interested parties may obtain a copy of the briefing packet prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing in the event a hearing is held in person.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202001706
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 29, 2020

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Quarterly Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 27, 2020, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Quarterly HCPCS Updates.

The public hearing is tentatively scheduled to be held in the HHSC Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

State of Disaster. In the event of a continued state of disaster related to COVID-19 and directions to limit in-person contact, this hearing may be conducted remotely with no physical entry permitted. If the hearing is conducted remotely, it will be hosted online with comments accepted online or by phone. Further guidance will be posted on the HHSC website at the link cited above.

Proposal. The payment rates for the Quarterly HCPCS Updates are proposed to be effective September 1, 2020, for the following services:

Physician Administered Drugs

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and

Section 355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Rate Hearing Packet. A briefing packet describing the proposed payments rates will be made available at https://rad.hhs.texas.gov/rate-packets on or after May 12, 2020. Interested parties may obtain a copy of the briefing packet prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing in the event a hearing is held in person.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For quickest response, and to help curb the possible transmission of infection, please turn to e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202001704
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 29, 2020

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Public Notice - Amendment to the Texas Healthcare Transformation Quality Improvement (THTQIP) Waiver

In light of the public health emergency resulting from the impact of COVID-19, the Health and Human Services Commission (HHSC) submitted 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 the THTQIP waiver through September 30, 2022.

HHSC is requesting approval to implement the following flexibilities up through the end of the disaster period. Based on the evolving situation, HHSC continues to determine the most appropriate timeframe for each waiver or modification, which is not to exceed the disaster period.

Specifically, the state requests waiver or modification of the following:

Waive the requirements of 42 CFR 441.302(c)(2) requiring at least annual evaluations of Level of Care (LOC) in Long Term Services and Supports (LTSS), STAR+PLUS and STAR Kids programs.

Waive any requirements necessary to extend LTSS service authorizations.

Waive the requirements of 42 CFR 438.208(c) and 441.301(c) (3) and (4) relating to person-centered service plans completed annually.

Waive the requirements of 42 CFR 431.230 and 42 C.F.R. 438.420 to extend to 30 days the deadline to request a state fair hearing with continuation of benefits.

Waive the requirements of 42 C.F.R. 438.408 to allow individuals an additional 30 days to request a fair hearing after exhausting the managed care appeal process (from 120 to 150 days).

Waive the requirements of 42 C.F.R. 438.402 to allow individuals an additional 30 days to submit a managed care appeal request (from 60 to 90 days).

Waive the requirements of 42 CFR 431.244(f) to extend HHSC's deadline for the agency to take final administrative action to 120 days after the date the MCO appeal process has been exhausted or the date the agency receives a request for a fair hearing.

Waive the requirements of 42 CFR 438.408(b)(2) to provide MCOs an additional 30 days to resolve standard appeals (from 30 to 60 days).

Waive the requirements of 42 CFR 438.406(b)(3) that a member appealing to an MCO must provide a written request for an appeal that has been requested orally.

Waive any requirements of the state plan or 1115 that require face-to-face contacts to allow the services and appropriate assessments to be performed by telehealth, telemedicine, or telephonic contact as consistent with state law and subject to HHSC requirements.

Extend or allow the state to waive any requirements for the signature of a physician, DME provider, or Medicaid recipient.

Allow Texas Medicaid to reimburse pharmacies for the administration of flu vaccines, long acting antipsychotics, and drugs used to treat substance use disorder or opioid dependency.

Allow the state to suspend releasing individuals from waiver interest lists.

Allow individuals who will no longer be eligible for the STAR Kids program due to turning 21 during the COVID-19 pandemic to stay in STAR Kids rather than transitioning to STAR+PLUS to comply with House Resolution (H.R.) 6201 (116th Congress, 2019-2020; Public Law No: 116-127).

Additionally, the state is working under the authority of the blanket waivers given by CMS. HHSC is requesting that these waivers and modifications become effective at the earliest possible date and be retroactive in Texas to the date of March 13, 2020.

Pursuant to 42 CFR 431.416(g), CMS has determined that the existence of unforeseen circumstances resulting from the COVID-19 public health emergency warrants an exception to the normal state and federal public notice procedures to expedite a decision on a proposed COVID-19 section 1115 demonstration. States applying for a COVID-19 section 1115 demonstration are not required to conduct a public notice and input process.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, or obtain additional information regarding this amendment by contacting Camille Weizenbaum at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-202001562
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 22, 2020

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Texas Department of Housing and Community Affairs

Notice of Public Comment Period and Public Hearings on the Draft 2021 Low Income Home Energy Assistance Program State Plan

In accordance with the U. S. Department of Health and Human Services' requirements for the Low Income Home Energy Assistance Program (LIHEAP) and Texas Government Code, Chapter 2105, Subchapter B, the Texas Department of Housing and Community Affairs (TDHCA) will hold public hearings during a 25-day Public Comment period to accept public comment on the draft 2021 LIHEAP State Plan.

The LIHEAP State Plan describes the proposed use and distribution of LIHEAP funds for Federal Fiscal Year 2021. LIHEAP provides funding for the Comprehensive Energy Assistance Program and the Weatherization Assistance Program.

The draft 2021 LIHEAP State Plan was presented and approved by the TDHCA Board of Directors on April 23, 2020. As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA has posted the proposed draft 2021 LIHEAP State Plan on the TDHCA website https://www.tdhca.state.tx.us/public-comment.htm. A copy of the plan can be obtained by sending a request to TDHCA, P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 936-7828.

Please visit the TDHCA Public Comment Center at http://www.tdhca.state.tx.us/public-comment.htm to access the draft Plan.

Depending on the situation regarding COVID-19 in late May, the public hearings will be either four public hearings held around the state or two virtual public hearings conducted via webinar. Public hearings provide the opportunity for comment from the public and the subrecipient network. If the situation allows for in-person public hearings, they will be held as follows:

Austin

Tuesday, May 26, 2020, 5:30 p.m. - 6:00 p.m.

TDHCA Headquarters, Room 116, 221 East 11th Street, Austin, Texas 78701

Fort Worth

Wednesday, May 27, 2020, 2:00 p.m. - 2:30 p.m.

Southside Community Center, 959 E. Rosedale, Fort Worth, Texas 76104

Houston

Wednesday, May 27, 2020, 5:30 p.m. - 6:00 p.m.

Baker Ripley, Inc., Aberdeen Campus, Education Center, 3838 Aberdeen Way, Houston, Texas 77025

Odessa

Thursday, May 28, 2020, 2:00 p.m. - 2:30 p.m.

West Texas Opportunities, 1415 East 2nd, Odessa, Texas 79762

If the Department cannot conduct in-person public hearings due to COVID-19, two virtual public hearings will be held via webinar as follows:

Wednesday, May 27, 2020 from 2:00 p.m. - 3:00 p.m.

Via GoToWebinar

To Register: https://attendee.gotowebinar.com/register/6842808822375322637

Dial-in number: +1 (415) 930-5321, access code 351-573-674

(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.)

Wednesday, May 27, 2020 from 5:15 p.m. - 6:15 p.m.

Via GoToWebinar

To Register: https://attendee.gotowebinar.com/register/8052177054929158157

Dial-in number: +1 (562) 247-8321, access code 210-536-015

(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.)

At the hearings, the draft 2021 LIHEAP Plan will be presented for public comment. Persons may provide public comment on the Plan either through oral testimony or written testimony. A representative from TDHCA will be present at the hearings to explain the planning process and receive comments from interested citizens and affected groups regarding the Plan.

The public comment period to accept comments regarding the draft 2021 LIHEAP State Plan will be open from Friday, May 8, 2020, through Monday, June 1, 2020, at 5:00 p.m., Austin local time. Written comments concerning the draft 2021 LIHEAP Plan may also be submitted to the Texas Department of Housing and Community Affairs, Community Affairs Division-Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to gavin.reid@tdhca.state.tx.us. Any questions regarding the public comment process may be directed to Gavin Reid, Manager of Planning and Training, in the Community Affairs Division at (512) 936-7828 or gavin.reid@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or sign language interpreters for the hearing should contact Rita Gonzales-Garza, at (512) 475-3905 or Relay Texas at (800) 735-2989, at least three days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Rita Gonzales-Garza, (512) 475-3905 or by email at rita.garza@tdhca.state.tx.us, at least three days before the hearing so that appropriate arrangements can be made.

Aviso de Audiencia Pública sobre el Anteproyecto de la Solicitud y los Planes Estatales para el Año Fiscal Federal 2021 del Low Income Home Energy Assistance Program (LIHEAP)

Conforme con los requisitos del Departamento de Salud y Servicios Humanos de los Estados Unidos para la programa federal del Low Income Home Energy Assistance Program (LIHEAP, por sus siglas en ingles) y el Capítulo 2105, Subcapítulo B del Código del Gobierno de Texas, el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en ingles) conducirá varias audiencias públicablicas. El propósito principal de estas audiencias es para solicitar comentario públicablico sobre los anteproyectos de la Solicitud y el Plan Estatal para los Años Fiscal Federal (FFY, por sus siglas en ingles) el Plan Estatal LIHEAP para el FFY 2021 (Anteproyecto del Plan Estatal LIHEAP).

El Anteproyecto del Plan Estatal LIHEAP detalla el propuesto uso y distribución de los fondos federales LIHEAP para el FFY 2021. El programa de LIHEAP provee fondos para los programas de Comprehensive Energy Assistance Program (CEAP, por sus siglas en ingles) y el Weatherization Assistance Program (WAP, por sus siglas en ingles).

Los Anteproyectos de LIHEAP fueron presentados y aprobados por la junta directiva del TDHCA el 23 de abril del 2020. Como seguimiento a la provision de información pública, asesoramiento y los requisitos de las audiencias públicas para las programa LIHEAP, la División de Asuntos Comunitarios del TDHCA publicará los anteproyectos de los planes estatales federal en el sitio web del TDHCA Public Comment Center en http://www.tdhca.state.tx.us/public-comment.htm. Por favor viste a el sitio web http://www.tdhca.state.tx.us/public-comment.htm para acceder el plan.

Los documentos se pueden obtener comunicandose al TDHCA, P.O. Box 13941, Austin, Texas 78711-3941 o por teléfono al (512) 936-7828.

Dependiendo de la situación con respecto a COVID-19 a fines de mayo, las audiencias públicas serán cuatro audiencias públicas en todo el estado o dos audiencias públicas virtuales realizadas a través de un seminario web. Las audiencias públicas brindan la oportunidad de comentarios del público y de la red de sub-beneficiarias del program LIHEAP. Si la situación permite audiencias públicas en persona, se llevarán a cabo de la siguiente manera:

Las audiencias públicas sobre los Anteproyectos de los Planes Estatales de LIHEAP se ha programado de la manera siguiente:

martes, 26 de mayo, 2020, 5:30 p.m. - 6:00 p.m.

el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA)

221 Calle 11 Este, Sala 116

Austin, Texas 78701

miércoles, 27 de mayo, 2020, 2:00 p.m. - 2:30 p.m.

Centro de Communidad del Sur/Southside Community Center

959 E. Rosedale

Fort Worth, Texas 76104

miércoles, 27 de mayo, 2020, 5:30 p.m. - 6:00 p.m.

Baker Ripley, Inc.

3838 Aberdeen Way

Houston, Texas 77025

jueves, 28 de mayo, 2020, 2:00 p.m. - 2:30 p.m.

West Texas Opportunities

1415 E. 2nd

Odessa, Texas 79762

Si el Departamento no puede realizar audiencias públicas en persona debido a COVID-19, se llevarán a cabo dos audiencias públicas virtuales a través del seminario web de la siguiente manera:

miércoles, 27 de mayo, 2020, a las 2:00 p.m. - 3:00 p.m

Via GoToWebinar

To Register: https://attendee.gotowebinar.com/register/6842808822375322637

Número de marcación: +1 (415) 930-5321, access code 351-573-674

(Las personas que usan el número de marcación y el código de acceso sin registrarse en línea solo podrán escuchar la audiencia pública y no podrán hacer preguntas ni proporcionar comentarios).

miércoles, 27 de mayo 2020, a las 5:15 p.m. - 6:15 p.m.

Via GoToWebinar

To Register: https://attendee.gotowebinar.com/register/8052177054929158157

Número de marcación: +1 (562) 247-8321, access code 210-536-015

(Las personas que usan el número de marcación y el código de acceso sin registrarse en línea solo podrán escuchar la audiencia pública y no podrán hacer preguntas ni proporcionar comentarios).

Durante las audiencias los Anteproyectos de el Plan Estatal LIHEAP sera presentada para solicitar comentario público. Personas interesadas pueden proveer comentario publico sobre los Anteproyectos del Plan Estatal LIHEAP en forma escrita o testimonio oral. Un representante del TDHCA estará presente para explicar el proceso de planificación y recibir comentario público de personas y grupos interesadas respecto a los anteproyectos de los planes estatales.

El período de comentario público para aceptar comentarios sobre los Anteproyectos de el Plan Estatal LIHEAP comienza el viernes, 8 de mayo del 2020 hasta el lunes, 1 de juño del 2020 a las 5:00 de la tarde hora local. Comentarios escritos sobre los anteproyectos de los planes estatales tambien pueden ser presentados por correo al Texas Department of Housing and Community Affairs, Attención: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941 o pueden enviarse a través de correo electrónico a gavin.reid@tdhca.state.tx.us o por fax al (512) 475-3935. Cualquier pregunta relacionada con el proceso de comentarios públicos puede dirigirse a Gavin Reid, Gerente de Planificación y Capacitación, en la División de Asuntos Comunitarios al (512) 936-7828 o gavin.reid@tdhca.state.tx.us. Si tiene preguntas sobre este proceso, comuníquese con Gavin Reid, al (512) 936-7828 o envíe un correo electrónico a: gavin.reid@tdhca.state.tx.us.

Personas que necesiten equipos o servicios auxiliares para esta junta deben comunicarse con Gina Esteves, empleada responsable de la ley sobre la Ley de Estadounidenses con Discapacidades (ADA, por sus siglas en ingles), a Rita Gonzales-Garza al (512) 475-3905 o al Relay Texas al (800) 735-2989 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza al siguiente número (512) 475-3905 o enviarle un correo electrónico a rita.garza@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202001710

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 29, 2020

♦ ♦ ♦

Second Amendment to 2020-1 Multifamily Direct Loan Annual Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available in this Annual Notice of Funding Availability through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME Investment Partnerships Program (HOME) allocations, the 2019 Grant Year HOME allocation, and the 2018 and 2019 Grant Year National Housing Trust Fund (NHTF) allocations. The Department may amend this NOFA or the Department may release a new NOFA upon receiving additional de-obligated funds from HOME allocations, or upon receiving new funds from the 2020 HOME or NHTF allocations from HUD. These funds have been programmed for multifamily activities including acquisition, refinance, and preservation of affordable housing involving new construction and/or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to $23,356,025.20 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans.

Of that amount, at least $4,733,439.00 will be available for eligible Community Housing Development Organizations (CHDO) meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this NOFA; up to $9,509,857.20 will be available for applications proposing Supportive Housing in accordance with 10 TAC §11.1(d)(122) and §11.302(g)(4) of the 2020 Qualified Allocation Plan (QAP) or applications that commit to setting aside units for extremely low-income households as required by 10 TAC §13.4(a)(1)(A)(ii). The remaining funds will be available under the General set-aside for applications proposing eligible activities in non-Participating Jurisdictions.

At the Board meeting on April 23, 2020, the Department approved the Second Amendment to 2020-1 Multifamily Direct Loan Annual NOFA, whereby $4,123,858.00 in NHTF became available in the Soft Repayment set-aside on a statewide basis through August 31, 2020 (if sufficient funds remain).

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified earning 80 percent or less of the applicable Area Median Family Income. All funding is currently available on a statewide basis within each set-aside until August, 31, 2020 (if sufficient funds remain).

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5:00 p.m. Austin local time on August 31, 2020. The "Amended 2020-1 Multifamily Direct Loan Annual NOFA" is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the Second Amendment to the NOFA is posted. Subscription to the Department's LISTSERV is available at http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p.

Questions regarding the 2020-1 Multifamily Direct Loan Annual NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-202001709
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 29, 2020

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for MotivHealth Insurance Company, a foreign health maintenance organization (HMO). The home office is in South Jordan, Utah.

Application to do business in the state of Texas for Attorneys' Title Guaranty Fund, Inc., a foreign title company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202001703
James Person
General Counsel
Texas Department of Insurance
Filed: April 29, 2020

♦ ♦ ♦

Region D Regional Water Planning Group

Notice of Public Hearing

PUBLIC NOTICE OF HEARING AND OPPORTUNITY TO PROVIDE COMMENTS

TO: Mayors of municipalities; County Judges of Counties located in whole or in part in the Region D regional water planning area; districts and authorities created under Texas Constitution, Article III, §52, or Article XVI, §59; retail public utilities; each holder of record of a permit, certified filing, or certificate of adjudication for the use of surface water, the diversion of which occurs in the Region D regional water planning area; all regional water planning groups; the Executive Administrator of the Texas Water Development Board; newspapers of general circulation; and to additional interested persons.

FROM: North East Texas Regional Water Planning Group (NETRWPG)

RE: Public Notice of the Initially Prepared Plan (IPP) of the Regional Water Plan of the North East Texas Regional Water Planning Group and Public Hearing

DATE: April 30, 2020

To All Interested Parties:

Notice is hereby given that the North East Texas Regional Water Planning Group (NETRWPG) is taking comment on the adopted Initially Prepared Plan (IPP). The comments will be used in developing an approved regional water plan by NETRWPG. The NETRWPG area, also known as Region D, includes the following counties: Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Hunt, Lamar, Marion, Morris, Rains, Red River, Smith (partial), Titus, Upshur, Van Zandt, and Wood. The NETRWPG will accept written comments from the date of this notice through September 9, 2020, for all state agencies. The deadline for comments from the public is August 11, 2020. The date of the public hearing is June 11, 2020, at 5:00 p.m.

The public hearing is designed to afford the public with an opportunity to provide verbal comments. The public also has the right to provide written comments and comments via the internet. This means there are three different ways to provide comments. All comments will be considered regardless of the method used to communicate them. The coronavirus pandemic has not materially reduced the public's opportunity to provide written or electronic comments but has disrupted the verbal method of providing comments. It thus may be necessary to use the telephone as an alternate to the in-person method to receive verbal comments due to further impacts of the coronavirus pandemic. The safest way to provide comments is to send them to *regiond@netmwd.com.* Due to recent developments associated with the COVID-19 pandemic and in extending the public comment period to accommodate this unique condition, the NETRWPG has changed the date and format of their public hearing as follows:

The date, time, and location of the public hearing is as follows:

Notice is given that a public hearing on the IPP will be at 5:00 p.m. on June 11, 2020, in the Mount Pleasant Civic Center, 1800 North Jefferson Avenue, Mount Pleasant, Titus County, Texas, if permissible. This public hearing will be held with social distancing and other reasonable conditions in effect. The public hearing will be conducted using telephones only if the in-person public hearing scheduled in Mount Pleasant cannot be held. The telephonic method is in lieu of an in-person method if the coronavirus pandemic precludes holding a public hearing in person on that date. Regardless, the public hearing will be held on June 11, 2020, at 5:00 p.m. Preferably in person but telephonically as a last resort.

If necessitated due to the coronavirus pandemic, the public hearing will be conducted by telephone pursuant to the authority of Texas Government Code Section 551.125, and any applicable orders of the Texas Governor regarding public gatherings. Following a brief presentation, public comments may be delivered. The telephone numbers to use in the event of a telephonic public hearing are 1 (435) 777-2200 and 1 (800) 309-2350. Please reserve use of the toll-free 800 number to those that only have access to a land-based telephone line. The access code to be entered when prompted is 3250760#. Individuals desiring to make public comment must dial *5 on their phone when prompted, which will place them in queue. Only the speaker having the floor will be able to speak. All other commenters' phones will be muted. Each speaker must dial in on a separate phone. The proceedings via telephone will be recorded if it occurs. At the beginning of each public comment, the commenter must identify themselves by first and last name. Additional instructions during the public hearing will be provided in the event that the public hearing is held using the telephonic method.

The NETRWPG will accept comments at the public hearing even if held by telephone. Comments may be sent to *regiond@netmwd.com* or written comments may be sent directly to the NETRWPG by delivery to the NETMWD, P.O. Box 955, 4180 Highway 250, Hughes Springs, Texas 75656.

A summary of the proposed action to be taken is as follows:

The proposed action is taking public comment on the adopted IPP and development of a regional water plan by the North East Texas Regional Water Planning Group (NETRWPG). A copy of the IPP is available for viewing on the Northeast Texas Municipal Water District (NETMWD) website *(www.netmwd.com).* A copy of the IPP is available for viewing at the office of the County Clerk in each county located within Region

D and at most Public Libraries in Region D. For a further description of the libraries that have a copy of the IPP, please call (903) 639-7538.

The name, telephone number, and address of the person to whom questions or requests for additional information may be submitted is as follows:

Walt Sears, telephone number (903) 639-7538, Northeast Texas Municipal Water District, P.O. Box 955, Hughes Springs, Texas 75656. NETMWD is the Administrator for the NETRWPG.

How the public may submit comments is as follows:

The NETRWPG will accept written and oral comments at the public hearing. Written comments may be sent directly to the NETRWPG by delivery to the NETMWD, P.O. Box 955, 4180 Highway 250, Hughes Springs, Texas 75656. E-mail comments may be sent to *regiond@netmwd.com.* The deadline for submission of written comments is September 9, 2020, for state agencies. Comments from the public will be accepted through August 11, 2020.

TRD-202001695

Walt Sears, Jr.
NETMWD General Manager
Region D Regional Water Planning Group
Filed: April 28, 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) were 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)

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 ____Not applicable

Verified prospective applicant's / applicant's income ____Yes ____Not applicable

Verified prospective applicant's / applicant's available cash to close ___Yes ____Not applicable

Verified prospective applicant's / applicant's debts and other assets ____Yes ____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 lender receives an acceptable survey

4. The subject property's condition meets lender's requirements

Figure: 7 TAC §80.201(b)

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes all the documents lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____

_____
Residential Mortgage Loan Originator Name

_____
Mailing address

_____
Phone number

_____
e-mail address

_____
NMLS ID #

The correct version of Form B §81.201(b) is as follows.

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 ____Not applicable

Verified prospective applicant's / applicant's income: _____Yes ____Not applicable

Verified prospective applicant's / applicant's available cash to close: _____Yes ____Not applicable

Verified prospective applicant's / applicant's debts and other assets: _____Yes ____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 lender receives an acceptable property survey

4. The subject property's condition meets lender's requirements

Figure: 7 TAC §81.201(b)

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes all the documents the lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

_____
Residential Mortgage Loan Originator Name

_____
Mailing address

_____
Phone number

_____
e-mail address

_____
NMLS ID #

TRD-202001683

♦ ♦ ♦

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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