TEXAS REGISTER

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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 July 30, 2020

Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, Cassandra "Cassie" Campbell of Salado, Texas (Ms. Campbell is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, Michael S. "Mike" Clements of Cypress, Texas (Captain Clements is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, Brian J. Eastridge, M.D. of San Antonio, Texas (Dr. Eastridge is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, Darrin R. "Rudy" Rudolph of Longview, Texas (Mr. Rudolph is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, Gerad A. Troutman, M.D. of Lubbock, Texas (replacing Robert D. "Bobby" Greenberg, M.D. of Belton, whose term expired).

Designated as presiding officer of the Advisory Council on Emergency Medical Services, for a term to expire at the pleasure of the Governor, Alan H. Tyroch, M.D. of El Paso (Dr. Tyroch is replacing Robert D. "Bobby" Greenberg, M.D. of Belton).

Greg Abbott, Governor

TRD-202003171

♦ ♦ ♦

Proclamation 41-3754

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2020, certifying under Section 418.014 of the Texas Government Code that the threats and incidents of violence starting on May 29, 2020, which have endangered public safety, constitute and pose an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on June 30, 2020, I issued a proclamation renewing the disaster declaration for all Texas counties; and

WHEREAS, these events have caused or imminently threatened widespread or severe damage, injury, and property loss, among other harms, at a time when the State of Texas is responding to the novel coronavirus (COVID-19) disaster; and

WHEREAS, while all Americans are entitled to exercise their First Amendment rights, it is imperative that order is maintained, all persons are kept safe and healthy, and property is protected; and

WHEREAS, peaceful protestors, many of whom are responding to the senseless taking of life by the reprehensible actions of a few, should themselves be protected from harm; and

WHEREAS, the declaration of a state of disaster has facilitated and expedited the use and deployment of resources to enhance preparedness and response to the ongoing threats, including by ensuring that federal law enforcement officers can fully assist with the efforts; and

WHEREAS, a state of disaster continues to exist in all counties due to threats of widespread or severe damage, injury, and property loss, among other harms;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, 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(a), I hereby continue the suspension of all relevant provisions within Chapter 1701 of the Texas Occupations Code, as well as Title 37, Chapters 211-229 of the Texas Administrative Code, to the extent necessary for the Texas Commission on Law Enforcement to allow federal law enforcement officers to perform peace officer duties in Texas. Additionally, pursuant to Section 418.016, 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 cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

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 30th day of July, 2020.

Greg Abbott, Governor

TRD-202003103

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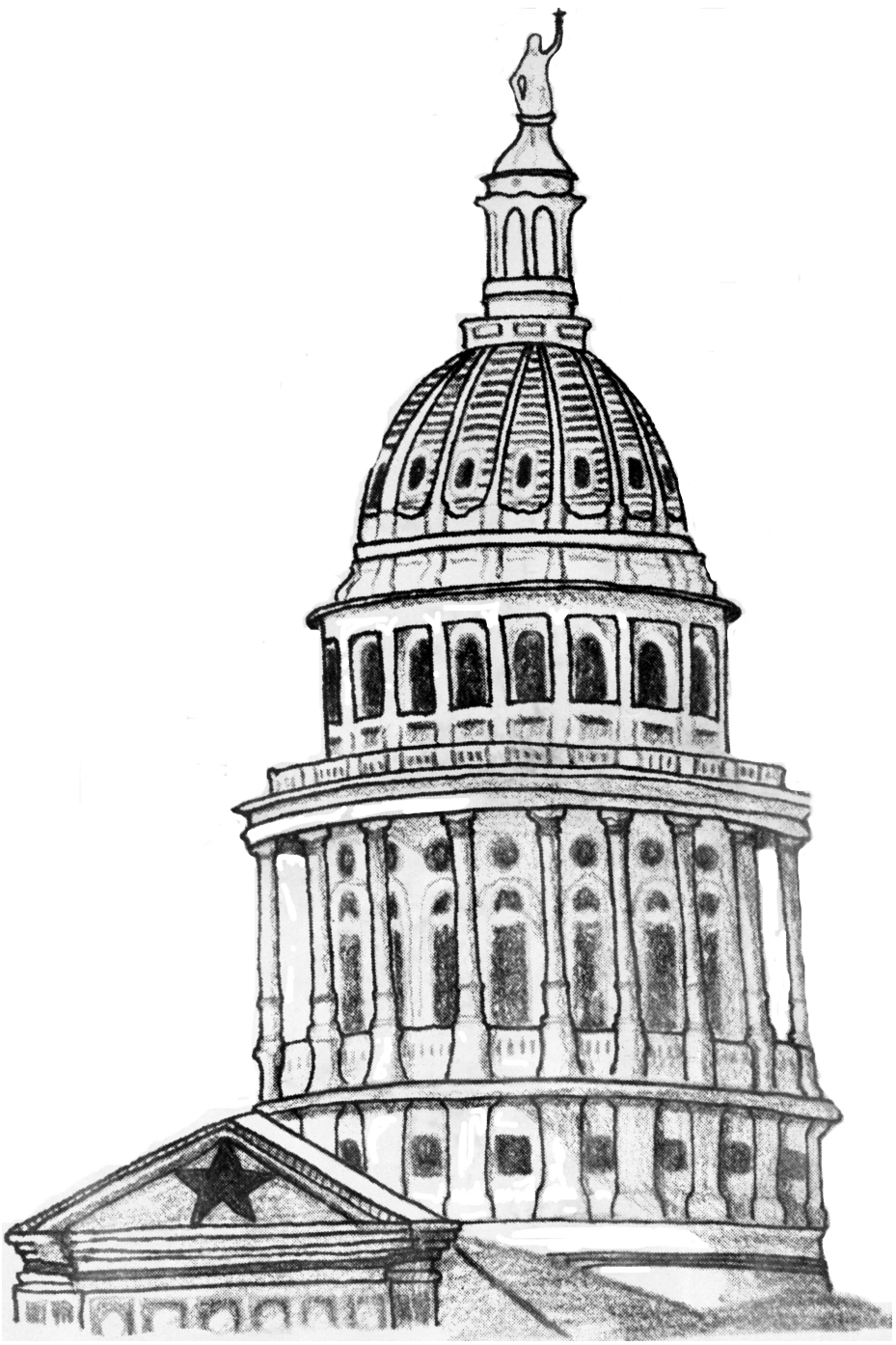

THE ATTORNEY GENERAL

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-0366-KP

Requestor:

The Honorable J.M. Lozano

Chair, House Committee on Environmental Regulation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Questions relating to governance of a non-profit entity created by and affiliated with a housing authority (RQ-0366-KP)

Briefs requested by August 27, 2020

RQ-0367-KP

Requestor:

The Honorable Bryan Hughes

Chair, Senate Committee on State Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Information a local jurisdiction must provide if denying or conditionally approving a plat under chapter 212 of the Local Government Code and the authority local governments to establish prerequisites to the submission of a plat application (RQ-0367-KP)

Briefs requested by August 28, 2020

RQ-0368-KP

Requestor:

The Honorable Rafael Anchía

Chair, Committee on International Relations & Economic Development

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether hotel occupancy tax revenue may be used to fund a public space at an apartment complex under section 351.101 of the Tax Code (RQ-0368-KP)

Briefs requested by September 3, 2020

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

TRD-202003154
Lesley French
General Counsel
Office of the Attorney General
Filed: August 4, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0321

The Honorable Mark A. Gonzalez

Nueces County District Attorney

901 Leopard, Room 206

Nueces County Courthouse

Corpus Christi, Texas 78401-3681

Re: Whether in misdemeanor cases the trial court has authority to issue a capias on the filing of an information or complaint under article 23.04, Code of Criminal Procedure (RQ-0331-KP)

S U M M A R Y

A capias is a writ from a criminal court directed to any peace officer, commanding the officer to arrest a person accused of an offense and bring the arrested person before that court. Chapter 23 generally applies to post-bail and post-commitment settings. Construed within the context of chapter 23, articles 23.01 and 23.04 identify the court that may issue a capias, after commitment or the posting of bail. Thus, the judge of a court that obtains jurisdiction of a misdemeanor case upon the filing of an information or complaint may issue a capias after commitment or bail and before trial.

Opinion No. KP-0322

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: County authority to require facial coverings in courtrooms, courthouses, and county buildings (RQ-0356-KP)

S U M M A R Y

Local Government Code subsection 291.001(3) provides that the commissioners court shall maintain and regulate a county courthouse and other county offices and buildings. Pursuant to this authority, a commissioners court may require any person entering a courthouse or other county-owned or controlled building to wear a facial covering.

Judges possess broad inherent authority to control orderly proceedings in their courtrooms, and pursuant to that authority they could require individuals in the courtroom to wear facial coverings if necessary to maintain order and safety. In addition, the Texas Supreme Court has issued an emergency order requiring all judges to comply with guidance promulgated by the Office of Court Administration, which requires facial coverings by all individuals while in the courthouse. Thus, courts may require any person entering the courthouse in which they preside to wear a facial covering while in the courthouse.

Government Code section 418.108 authorizes a county judge to declare a local state of disaster and upon such declaration, vests the county judge with authority to control the occupancy of premises in the disaster area. Pursuant to this emergency authority, a county judge operating under a local disaster order could require a person to wear a facial covering when occupying a courthouse or other county-owned or controlled building.

Executive Order GA-29 allows local law enforcement and local officials to impose a fine not to exceed $250 for an individual's second violation of a mask requirement. In addition, public officials may require facial coverings for those entering the courthouse or other county buildings and may deny entry to those individuals refusing to wear a facial covering inside those premises.

Opinion No. KP-0323

The Honorable Jim Murphy

Chair, House Committee on Pensions, Investments & Financial Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Metropolitan Transit Authority of Harris County to prohibit service and access to its transit authority system to a person who refuses to comply with a rule requiring facial coverings (RQ-0360-KP)

S U M M A R Y

Subsection 451.107(a) of the Transportation Code authorizes the board of a metropolitan transit authority to adopt rules for the safe and efficient operation and maintenance of the transit authority system. If wearing a facial covering in a transit authority vehicle or facility is necessary for the safe and efficient operation of the Metropolitan Transit Authority of Harris County during the COVID-19 pandemic, the Authority may require any person medically capable of doing so to wear a facial covering when entering its vehicles or facilities. Furthermore, it may refuse service to or have removed individuals who refuse to comply with a rule that requires facial coverings.

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

TRD-202003155
Lesley French
General Counsel
Office of the Attorney General
Filed: August 4, 2020

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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

SUBCHAPTER F. PERSONNEL PRACTICES AND DEVELOPMENT

25 TAC §448.603

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 448 Standard of Care, an amendment to §448.603, concerning an emergency rule in response to COVID-19 in order to expand a licensed Chemical Dependency Treatment Facility's (CDTF) ability to provide abuse, neglect, and exploitation training and Nonviolent Crisis Intervention training to staff through live, interactive, instructor-led, electronic means, performed using synchronous audiovisual interaction, to reduce the risk of COVID-19 transmission.

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

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this amendment to §448.603, Training.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule amendment to §448.603(d)(1) to temporarily permit a licensed CDTF to provide abuse, neglect, and exploitation training to staff through live, interactive, instructor-led, electronic means, performed using a synchronous audiovisual interaction, to reduce the risk of COVID-19 transmission. HHSC is also adopting an emergency rule amendment to §448.603(d)(4) to temporarily permit a licensed CDTF to provide Nonviolent Crisis Intervention training to staff through live, interactive, instructor-led, electronic means, performed using a synchronous audiovisual interaction, to reduce the risk of COVID-19 transmission. There are no other changes to §448.603.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Government Code §2001.034 and §531.0055 and Health and Safety Code §464.009. Texas 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. Texas 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.

This emergency rule amendment implements Government Code §531.0055 and Health and Safety Code §464.009.

§448.603. Training.

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

(d) The following initial training(s) must be received within the first 90 days of employment and must be completed before the employee can perform a function to which the specific training is applicable. Subsequent training must be completed as specified.

(1) Abuse, Neglect, and Exploitation. All residential program personnel with any direct client contact shall receive eight hours of live, interactive, instructor-led, electronic or face-to-face abuse, neglect, and exploitation training [~~as described in Figure: 40 TAC §148.603(d)(1) which is attached hereto and incorporated herein as if set forth at length~~]. All outpatient program personnel with any direct client contact shall receive [~~received~~] two hours of live, interactive, instructor-led, electronic or face-to-face abuse, neglect, and exploitation training.

Figure: 25 TAC §448.603(d)(1) (No change.)

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

(4) Nonviolent Crisis Intervention. All direct care staff in residential programs and outpatient programs shall receive this training. The live, interactive, instructor-led, electronic or face-to-face training shall teach staff how to use verbal and other non-physical methods for prevention, early intervention, and crisis management. The instructor shall have documented successful completion of a course for crisis intervention instructors or have equivalent documented training and experience.

(A) The initial training shall be four hours in length.

(B) Staff shall complete two hours of annual training thereafter.

(5) - (7) (No change.)

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

Filed with the Office of the Secretary of State on July 31, 2020.

TRD-202003118
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: July 31, 2020
Expiration date: November 27, 2020
For further information, please call: (512) 834-4591

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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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.503

The Public Utility Commission of Texas (commission) proposes amendments to §25.503, relating to oversight of wholesale market participants. The proposed amendments will update the process used by the commission to select the entity to monitor wholesale market reliability-related requirements for Electric Reliability Council of Texas (ERCOT). Specifically, the proposed amendments will broaden the pool of candidates eligible to serve as the reliability monitor for the ERCOT wholesale market. The proposed amendments will also make other minor changes.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rule will not expand, limit, or repeal an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

David Smeltzer, Agency Counsel, Rules Division, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Smeltzer has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be a broadening of the pool of candidates eligible to serve as reliability monitor. This increased competition will result in a more efficient process used by the commission to monitor market participants' compliance with wholesale market reliability requirements. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on September 4, 2020, if requested in accordance with Texas Government Code §2001.029. In light of the pending public emergency related to the coronavirus disease (COVID-19), this public hearing will be conducted remotely. The request for a public hearing must be received by August 27, 2020. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the

hearing. If a request for public hearing is received, commission staff will file in this project instructions on how a member of the public can participate in the hearing remotely.

Public Comments

Comments on the proposed amendment may be filed through the interchange on the commission's website as long as the commission's order filed in Docket No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019,* is in effect. Should the commission's order entered into in Docket No. 50664 no longer be in effect, then parties may file written comments by submitting sixteen copies to the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, by August 27, 2020. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to project number 50602.

Statutory Authority

This amendment is proposed under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §39.151, which grants the commission authority to adopt and enforce rules concerning reliability of the regional electrical network. Section 39.151 further provides that the commission may delegate to an independent organization responsibilities for establishing or enforcing such rules, which are subject to commission oversight and review.

Cross reference to statutes: Public Utility Regulatory Act §§ 14.002 and 39.151.

§25.503. Oversight of Wholesale Market Participants.

(a) Purpose. The purpose of this section is to establish the standards that the commission will apply in monitoring the activities of entities participating in the wholesale electricity markets, including markets administered by the Electric Reliability Council of Texas (ERCOT), and enforcing the Public Utility Regulatory Act (PURA) and ERCOT procedures relating to wholesale markets. The standards contained in this rule are necessary to:

(1) - (8) (No change.)

(9) prescribe ERCOT's role in enforcing ERCOT procedures relating to the reliability of the regional electric network and accounting for the production and delivery among generators and all other market participants[~~,~~] and monitoring and obtaining compliance with operating standards within the ERCOT regional network.

(b) (No change.)

(c) Definitions. The following words and terms when used in this section [~~shall~~] have the following meaning, unless the context indicates otherwise:

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

(3) ERCOT procedures--Documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria that are public and in effect in the ERCOT power region, including the ERCOT Protocols, [~~and~~] ERCOT Operating Guides, and Other Binding Documents as amended from time to time but excluding ERCOT's internal administrative procedures. The Protocols generally govern when there are inconsistencies between the Protocols and the Operating Guides, except when ERCOT staff, consistent with subsection (i) of this section, determines that a provision contained in the Operating Guides is technically superior for the efficient and reliable operation of the electric network.

(4) - (8) (No change.)

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

(f) Duties of market entities.

(1) Each market participant must [~~shall~~] be knowledgeable about ERCOT procedures.

(2) A market participant must [~~shall~~] comply with ERCOT procedures and any official interpretation of the Protocols issued by ERCOT or the commission.

(A) (No change.)

(B) A market participant appealing an official interpretation of the Protocols or seeking an amendment to the Protocols must [~~shall~~] comply with the Protocols unless and until the interpretation is officially changed or the amendment is officially adopted.

(C) (No change.)

(3) Whenever the Protocols require that a market participant make its "best effort" or a "good faith effort" to meet a requirement, or similar language, the market participant must [~~shall~~] act in accordance with the requirement unless:

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

(4) (No change.)

(5) The commission staff may request information from a market participant concerning a notification of failure to comply with a Protocol requirement or official interpretation of a requirement, or honor a formal commitment to ERCOT. The market participant must [~~shall~~] provide a response that is detailed and reasonably complete, explaining the circumstances surrounding the alleged failure, and must [~~shall~~] provide documents and other materials relating to such alleged failure to comply. The response must [~~shall~~] be submitted to the commission staff within five business days of a written request for information, unless commission staff agrees to an extension.

(6) A market participant's bids of energy and ancillary services must [~~shall~~] be from resources that are available and capable of performing, and must [~~shall~~] be feasible within the limits of the operating characteristics indicated in the resource plan, as defined in the Protocols, and consistent with the applicable ramp rate, as specified in the Protocols.

(7) All statements, data and information provided by a market participant to market publications and publishers of surveys and market indices for the computation of an industry price index must [~~shall~~] be true, accurate, reasonably complete, and must [~~shall~~] be consistent with the market participant's activities, subject to generally accepted standards of confidentiality and industry standards. Market participants must [~~shall~~] exercise due diligence to prevent the release of materially inaccurate or misleading information.

(8) A market entity has an obligation to provide accurate and factual information and must [~~shall~~] not submit false or misleading information, or omit material information, in any communication with ERCOT or with the commission. Market entities must [~~shall~~] exercise due diligence to ensure adherence to this provision throughout the entity.

(9) A market participant must [~~shall~~] comply with all reporting requirements governing the availability and maintenance of a generating unit or transmission facility, including outage scheduling reporting requirements. A market participant must [~~shall~~] immediately notify ERCOT when capacity changes or resource limitations occur that materially affect the availability of a unit or facility, the anticipated operation of its resources, or the ability to comply with ERCOT dispatch instructions.

(10) A market participant must [~~shall~~] comply with requests for information or data by ERCOT as specified by the Protocols or ERCOT instructions within the time specified by ERCOT instructions, or such other time agreed to by ERCOT and the market participant.

(11) When a Protocol provision or its applicability is unclear, or when a situation arises that is not contemplated under the Protocols, a market entity seeking clarification of the Protocols must [~~shall~~] use the Nodal Protocol Revision Request (NPRR) [~~(PRR)~~] process provided in the Protocols. If the NPRR [~~PRR~~] process is impractical or inappropriate under the circumstances, the market entity may use the process for requesting formal Protocol clarifications or interpretations described in subsection (i) of this section. This provision is not intended to discourage day to day informal communication between market participants and ERCOT staff.

(12) A market participant operating in the ERCOT markets or a member of the ERCOT staff who identifies a provision in the ERCOT procedures that produces an outcome inconsistent with the efficient and reliable operation of the ERCOT-administered markets must [~~shall~~] call the provision to the attention of ERCOT staff and the appropriate ERCOT subcommittee. All market participants must [~~shall~~] cooperate with the ERCOT subcommittees, ERCOT staff, and the commission staff to develop Protocols that are clear and consistent.

(13) A market participant must [~~shall~~] establish and document internal procedures that instruct its affected personnel on how to implement ERCOT procedures according to the standards delineated in this section. Each market participant must [~~shall~~] establish clear lines of accountability for its market practices.

(g) Prohibited activities. Any act or practice of a market participant that materially and adversely affects the reliability of the regional electric network or the proper accounting for the production and delivery of electricity among market participants is considered a "prohibited activity." The term "prohibited activity" in this subsection excludes acts or practices expressly allowed by the Protocols or by official interpretations of the Protocols and acts or practices conducted in compliance with express directions from ERCOT or commission rule or order or other legal authority. The term "prohibited activity" includes, but is not limited to, the following acts and practices that have been found to cause prices that are not reflective of competitive market forces or to adversely affect the reliability of the electric network:

(1) A market participant must [~~shall~~] not schedule, operate, or dispatch its generating units in a way that creates artificial congestion.

(2) A market participant must [~~shall~~] not execute pre-arranged offsetting trades of the same product among the same parties, or through third party arrangements, which involve no economic risk and no material net change in beneficial ownership.

(3) A market participant must [~~shall~~] not offer reliability products to the market that cannot or will not be provided if selected.

(4) A market participant must [~~shall~~] not conduct trades that result in a misrepresentation of the financial condition of the organization.

(5) A market participant must [~~shall~~] not engage in fraudulent behavior related to its participation in the wholesale market.

(6) A market participant must [~~shall~~] not collude with other market participants to manipulate the price or supply of power, allocate territories, customers or products, or otherwise unlawfully restrain competition. This provision should be interpreted in accordance with federal and state antitrust statutes and judicially-developed standards under such statutes regarding collusion.

(7) A market participant must [~~shall~~] not engage in market power abuse. Withholding of production, whether economic withholding or physical withholding, by a market participant who has market power, constitutes an abuse of market power.

(h) (No change.)

(i) Official interpretations and clarifications regarding the Protocols. A market entity seeking an interpretation or clarification of the Protocols must [~~shall~~] use the NPRR [~~PRR~~] process contained in the Protocols whenever possible. If an interpretation or clarification is needed to address an unforeseen situation and there is not sufficient time to submit the issue to the NPRR [~~PRR~~] process, a market entity may seek an official Protocol interpretation or clarification from ERCOT in accordance with this subsection.

(1) ERCOT must [~~shall~~] develop a process for formally addressing requests for clarification of the Protocols submitted by market participants or issuing official interpretations regarding the application of Protocol provisions and requirements. ERCOT must [~~shall~~] respond to the requestor within ten business days of ERCOT's receipt of the request for interpretation or clarification with either an official Protocol interpretation or a recommendation that the requestor take the request through the NPRR [~~PRR~~] process.

(2) ERCOT must [~~shall~~] designate one or more ERCOT officials who will be authorized to receive requests for clarification from, and issue responses to market participants, and to issue official interpretations on behalf of ERCOT regarding the application of Protocol provisions and requirements.

(3) The designated ERCOT official must [~~shall~~] provide a copy of the clarification request to commission staff upon receipt. The ERCOT official must [~~shall~~] consult with ERCOT operational or legal staff as appropriate and with commission staff before issuing an official Protocol clarification or interpretation.

(4) The designated ERCOT official may decide, in consultation with the commission staff, that the language for which a clarification is requested is ambiguous or for other reason beyond ERCOT's ability to clarify, in which case the ERCOT official shall inform the requestor, who may take the request through the NPRR [~~PRR~~] process provided for in the Protocols.

(5) All official Protocol clarifications or interpretations that ERCOT issues in response to a market participant's formal request or upon ERCOT's own initiative must [~~shall~~] be sent out in a market bulletin with the appropriate effective date specified to inform all market participants, and a copy of the clarification or interpretation must [~~shall~~] be maintained in a manner that is accessible to market participants. Such response must [~~shall~~] not contain information that would identify the requesting market participant.

(6) (No change.)

(j) Role of ERCOT in enforcing operating standards. ERCOT must [~~shall~~] monitor material occurrences of non-compliance with ERCOT procedures, which means [~~shall mean~~] occurrences that have the potential to impede ERCOT operations[~~,~~] or represent a risk to system reliability. Non-compliance indicators monitored by ERCOT must

[~~shall~~] include, but are [~~shall~~] not [~~be~~] limited to, material occurrences of failing resource performance measures as established by ERCOT, failure to follow dispatch instructions within the required time, failure to meet ancillary services obligations, failure to submit mandatory bids or offers, and other instances of non-compliance of a similar magnitude.

(1) ERCOT must [~~shall~~] keep a record of all such material occurrences of non-compliance with ERCOT procedures and must [~~shall~~] develop a system for tracking recurrence of such material occurrences of non-compliance.

(2) ERCOT must [~~shall~~] promptly provide information to and respond to questions from market participants to allow the market participant to understand and respond to alleged material occurrences of non-compliance with ERCOT procedures. However, this requirement does not relieve the market participant's operator from responding to the ERCOT operator's instruction in a timely manner and shall not be interpreted as allowing the market participant's operator to argue with the ERCOT operator as to the need for compliance.

(3) ERCOT must [~~shall~~] keep a record of the resolution of such material occurrences of non-compliance and of remedial actions taken by the market participant in each instance.

(4) ERCOT must [~~shall~~] promptly provide information to and respond to questions posed by the Reliability Monitor and the commission.[~~:~~]

(5) ERCOT must [~~shall~~] provide to the Reliability Monitor and the commission the support and cooperation the commission determines is necessary for the Reliability Monitor and the commission to perform their functions.

(k) Responsibilities of the Reliability Monitor. The Reliability Monitor must [~~shall~~] gather and analyze information and data as needed for its reliability monitoring activities. The Reliability Monitor works under the direction and supervision of the commission. The Reliability Monitor must [~~shall~~] protect confidential information and data in accordance with the confidentiality standards established in PURA, the ERCOT protocols, commission rules, and other applicable laws. The requirements related to the level of protection to be afforded information protected by these laws and rules are incorporated into this section. The duties and responsibilities of the Reliability Monitor may include, but are not limited to:

(1) Monitoring, investigating, auditing, and reporting to the commission regarding compliance with reliability-related ERCOT procedures, including Protocols, [~~and~~] Operating Guides, and Other Binding Documents, the reliability-related provisions of the commission's rules, and reliability-related provisions of PURA by market entities [~~Market Entities~~];

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

(l) Selection of the Reliability Monitor. The commission may select [~~and ERCOT shall contract with~~] an entity [~~selected by the commission~~] to act as the commission's Reliability Monitor. [~~The Reliability Monitor shall be independent from ERCOT and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities.~~] In selecting the Reliability Monitor, the commission must consider whether the Reliability Monitor satisfies the following criteria:

(1) Independence, objectivity, and the absence of potential conflicts of interest [~~Independent, objective, and without conflicts of interest~~];

(2) (No change.)

(3) Familiarity with the ERCOT Region and [~~demonstrated~~] understanding of [~~in~~] reliability-related ERCOT protocols, procedures, and other operating standards;

(4) Ability [~~Demonstrated ability~~] to manage confidential information appropriately; and

(5) Cost effectiveness.

(m) Funding of the Reliability Monitor. ERCOT must [~~shall~~] fund the operations of Reliability Monitor from the fee authorized by PURA §39.151.

(n) Standards for record keeping.

(1) A market participant who schedules through a qualified scheduling entity (QSE) that submits schedules to ERCOT on behalf of more than one market participants must [~~shall~~] maintain records to show scheduling, offer, and bidding information for all schedules, offers, and bids that its QSE has submitted to ERCOT on its behalf, by interval.

(2) All market participants and ERCOT must [~~shall~~] maintain records relative to market participants' activities in the ERCOT-administered markets to show:

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

(3) After the effective date of this section, all records referred to in this subsection except verbally dispatch instructions (VDIs) must [~~shall~~] be kept for a minimum of three years from the date of the event. ERCOT must [~~shall~~] keep VDI records for a minimum of two years. All records must [~~shall~~] be made available to the commission for inspection upon request.

(4) A market participant must [~~shall~~], upon request from the commission, provide the information referred to in this subsection to the commission, and may, if applicable, provide it under a confidentiality agreement or protective order pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents, and Other Material).

(o) Investigation. The commission staff may initiate an informal fact-finding review based on a complaint or upon its own initiative to obtain information regarding facts, conditions, practices, or matters that it may find necessary or proper to ascertain in order to evaluate whether any market entity has violated any provision of this section.

(1) (No change.)

(2) If the market entity asserts that the information requested by commission staff is confidential, the information must [~~shall~~] be provided to commission staff as confidential information related to settlement negotiations or other asserted bases for confidentiality pursuant to §22.71(d)(4) of this title.

(3) (No change.)

(4) If, as a result of its investigation, commission staff determines that there is evidence of a violation of this section by a market entity, the commission staff may request that the commission initiate appropriate enforcement action against the market entity. A notice of violation requesting administrative penalties or disgorgement of excess revenues must [~~shall~~] comply with the requirements of §22.246 of this title (relating to Administrative Penalties). Adjudication of a notice of violation requesting both an administrative penalty and disgorgement of excess revenues may be conducted within a single contested case proceeding. Additionally, for alleged violations that have been reviewed in the informal procedure established by this subsection, the commission staff must [~~shall~~] include as part of its prima facie case:

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

(D) a statement that the staff has concluded that the market entity failed to demonstrate, in the course of the investigation, the applicability of an exclusion or affirmative defense under subsection (h) of this section.

(5) - (7) (No change.)

(p) Remedies. If the commission finds that a market entity is in violation of this section, the commission may seek or impose any legal remedy it determines appropriate for the violation involved, provided that the remedy of disgorgement of excess revenues will [~~shall~~] be imposed for violations and continuing violations of PURA §39.157 and may be imposed for other violations of this section.

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

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 13, 2020
For further information, please call: (512) 936-7244

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING
SUBCHAPTER E. APPLICATION REVIEW AND PROTESTS

16 TAC §§33.50 - 33.63

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new §§33.50 - 33.63, relating to application review and protests.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted amendments to Alcoholic Beverage Code §11.43 and added new §11.431 and §11.432 (Acts, 86th Tex. Leg. R.S. (2019)). New §11.43(j) requires the agency to adopt rules to implement the application review and protest process including establishing reasonable timelines, identifying the roles and responsibilities of all parties involved in the process, and identifying potential avenues for mediation or informal dispute resolution. Additionally, the legislation made the following changes to the agency's process for protesting an application for a license or permit: (1) Protests will only come from external parties, not from TABC staff; (2) the agency is required to either deny or approve an application (rather than the current process of pursuing an agency-initiated protest; (3) an agency denial of an application triggers due process, outlined in §11.43 of the Alcoholic Beverage Code, with appeals to be heard by the State Office of Administrative Hearings (SOAH) first with a final opportunity for appeal at district court; and (4) all protests that move forward through the contested case process will be heard by SOAH; county judges will no longer have a role in the protest process.

The legislature required TABC to adopt rules implementing these statutory provisions by December 31, 2020.

Section by Section Discussion

The commission proposes to create a new Subchapter E, Application Review and Protests, within Chapter 33 to contain the proposed new rules.

§33.50 Purpose and Authority

The commission proposes new §33.50 to explain that the purpose of the rules in the new subchapter is to implement provisions of the Alcoholic Beverage Code related to application review and protests and that the adoption of the rules is authorized by those statutes.

§33.51 Definitions

The commission proposes new §33.51 to provide definitions of terms used in the subchapter.

§33.52 Computation of Time

Several rules in the proposed new subchapter contain deadlines for filing documents with the commission and for commission action. The commission proposes new §33.52 to clarify how days will be counted to determine deadlines. The proposed rule tracks the analogous rule in the Texas Rules of Civil Procedure.

§33.53 Applicable Rules

If adopted, the proposed new rules will become effective on December 31, 2020. The commission proposes new §33.53 to clarify that the new rules will apply only to an application received on or after the effective date of the rules. When an application is "received" is defined in proposed new §35.51.

§33.54 Delegation of Application Approvals

The commission proposes new §33.54 to specify that the commission delegates to the executive director or their designee the authority to approve an application that is uncontested. An application is uncontested if no valid protests have been filed or if all valid protests have been withdrawn. Pursuant to this delegation, no commission vote or other action will be required for uncontested applications.

§33.55 Conditional Approval

New commission rules proposed pursuant to statutory changes would require that a period of 15 days pass after an application is received before the permit is issued in order to allow time for interested parties to review the application and file protests. The commission proposes new §33.55 to provide that the executive director may, for a compelling reason, grant conditional approval of an application allowing the applicant to operate prior to the expiration of the 15-day period for protests filings. If a valid protest is timely filed, the proposed rule provides that the conditional approval will be revoked. Finally, the proposed rule provides that the applicant operates at its own risk of loss during that 15-day period, and that the commission will refund application fees to an applicant who fails to obtain the license or permit after conditional approval.

§33.56 Alternative Dispute Resolution

The commission proposes new §33.56 to provide for alternative dispute resolution in contested disciplinary matters. The proposed rule provides that parties may agree to use a mediator employed by SOAH or a private mediator. It specifies procedures for selection of a private mediator; requires that a private mediator agree to be subject to time limits imposed by the executive director, administrative law judge, or applicable law or rule; and provides for equal division of the costs of a private media-

tor among parties that are not governmental entities. Finally, the proposed rule requires all mediators to follow the ethical guidelines of the Alternative Dispute Resolution Section of the State Bar of Texas.

§33.57 Application Withdrawn

The commission proposes new §33.57 to provide that an applicant for a license or permit may withdraw its application at any time before the license or permit is issued or renewed or the application is denied. The rule provides that if an applicant fails to respond to agency requests for additional application information or application fees within ten days, the agency may consider the application withdrawn by the applicant. The proposed rule provides that an application that has been withdrawn may be refiled at any time and that withdrawal of an application does not trigger additional due process rights.

§33.58 Management Review

The commission proposes new §33.58 to provide by rule for management review related to a license or permit, premises address, or person. This is a method by which the agency notates in its records an issue of concern related to a license or permit, premises address, or person and when a license or permit application is filed related to that license or permit, premises address, or person, the agency addresses the issue of concern prior to issuing the license, permit, or renewal of the license or permit. The rule provides that the issue leading to the management review notation must be resolved and the notation removed before issuance of the license, permit, or renewal. It further provides that an applicant for a renewal of a license or permit may continue to operate under its existing license or permit until the management review issue is resolved. Finally, the rule prohibits a license or permit holder from surrendering its license or permit while management review is pending so that surrender is not used to remove the license or permit, premises address, or person from the agency's jurisdiction during an active investigation.

§33.59 Denial of Application after Referral of Protest for Hearing

The commission proposes new §33.59 to lay out procedures when a valid protest is referred to SOAH for a hearing while commission review and investigation related to the application is ongoing, and the executive director subsequently identifies a reason or reasons to recommend denial of the application. The proposed rule provides that in this circumstance, the application will be remanded from SOAH and set for commission consideration of the executive director's recommendation to deny the application, as required by Alcoholic Beverage Code §11.43(g).

The proposed rule requires the executive director to provide notice to protestants that the executive director is recommending denial of the application; that the case is being remanded to the agency for further processing; that unless the applicant requests a hearing on the recommendation for denial, the application will be set for commission consideration of the executive director's request for denial; and that if the applicant does request a hearing on the recommendation for denial or the commission declines to deny the application, the application will be referred back to SOAH for a hearing in which the protestants remain parties.

The proposed rule limits potential commission action on the executive director's recommendation for denial of an application when a valid protest has resulted in referral to SOAH to either denying the application or referring the matter back to SOAH. The commission may not grant a license or permit under these specific circumstances so as to preserve the protestant(s) right to a hearing.

§33.60 Request for Hearing on Recommendation of Application Denial

The commission proposes new §33.60 to lay out procedures for an applicant to request a hearing on the executive director's recommendation for denial of its application. The proposed rule requires the executive director to provide notice to an applicant of a recommendation for denial of its application. The applicant may then file with the commission a written request for an administrative hearing within 30 days of the date on the notice. The proposed rule provides a U.S. Mail address and electronic mail address for filing the hearing request. The proposed rule reiterates the statutory requirement that the executive director refer the matter to SOAH for a hearing if the applicant files a timely hearing request. If the applicant does not file a timely hearing request, the proposed rule states that the recommendation for denial of the application will be set for commission consideration at the next available regular commission meeting.

§33.61 Commission Action on Contested Applications

The commission proposes new §33.61 to lay out procedures following the issuance of a SOAH decision on a contested application. The proposed rule requires the executive director to place all proposals for decision on the commission's consent agenda, as a default action. If the commission approves by consent a proposal for decision recommending approval of an application and issuance of the license or permit, the proposed rule directs the executive director to issue the license or permit. The proposed rule requires the executive director to remove a proposal for decision from the consent agenda and set it for individual consideration at the request of the presiding officer of the commission or at least two other commission members. This option is available to the commissioners in the event that the presiding officer of the commission or at least two other commission members wish to modify or reject the proposal for decision or discuss the matter in an open meeting.

§33.62 Filing a Protest of a License or Permit Application

The commission proposes new §33.62 to lay out requirements for filing a valid protest of an application for a license or permit or a renewal of a license or permit. The proposed rule specifies that a protest must be filed by a person with legal standing to protest the application under the Alcoholic Beverage Code, in writing, before the deadline for filing (timely), by mailing or emailing to specific designated addresses, and that it must include all information required.

The proposed rule requires that in order to be timely, a protest of an application for a new license or permit must be filed between 60 days prior to the date the commission declares the application complete, as shown in the public database, and 15 days after. For a renewal application, a protest is timely filed if it is filed within the 60 days prior to expiration of the license or permit.

The proposed rule requires that a protest filed by a member of the public include the following information: the first and last name and physical address of the property of the person filing the protest; the approximate distance of the person's home from the premises that are the subject of the application; contact information for the protestant, and all reasonable grounds the protestant wishes to raise in protest of the application. A protest by a government official must include the name of the official, office, and

contact information; a description of the geographic limits of the official's jurisdiction; and the basis or bases for the protest.

The proposed rule provides that a protest that fails to meet any of the above rule requirements may be rejected.

§33.63 Withdrawal of Protest

The commission proposes new §33.63 to provide that a person may withdraw his or her protest at any time, and that the withdrawal must not include any conditions upon which withdrawal is based. The proposed rule provides a U.S. mail and electronic mail addresses to which withdrawals must be sent, and requests that protestants also send a copy of their withdrawal to the applicant. Finally, the proposed rule authorizes the executive director to issue a license or permit for which all valid protests have been withdrawn.

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rules will be in effect, there are no foreseeable economic implications anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rules. This rulemaking may decrease agency expenditures due to the executive director's recommendation for denial of problematic applications rather than the current extended and work-intensive process of pursuing internal protests by the agency.

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. The rules will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rules will not adversely affect a local economy in a material way, and no adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the new rules. A small business regulatory flexibility analysis is not required because the proposed rules will not adversely affect a small or micro-business in a material way.

Ms. Horton has determined that for each year of the first five years that the proposed rules will be in effect, the public will benefit because the rules will establish reasonable timelines, identify the roles and responsibilities of all parties involved in the process, and provide for alternative dispute resolution in disputes with the agency. The public will also benefit from clear provisions for due process in legal proceedings involving the agency.

This paragraph constitutes the commission's government growth impact statement for the proposed rules. The analysis addresses the first five years the proposed amendments would be in effect. The proposed rules neither create nor eliminate a government program. The proposed rules do not require the creation of new employee positions or the elimination of existing employee positions. The agency anticipates that the provisions of this rule will be absorbed using existing agency resources. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules do not increase or decrease fees paid to the agency. The proposed rules create new regulations because they constitute new state agency statements of general applicability that implement, interpret, or prescribe law or policy and describe procedures and practice requirements of a state agency. The proposed rules do not expand, limit, or repeal an existing regulation because they are all new rules. The proposed rules neither increase nor decrease the number of individuals subject to any existing rule's applicability. The proposed rules are not anticipated to have any impact on the state's economy.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rules on August 25, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The proposed new rules are authorized by Alcoholic Beverage Code §11.43, which requires the Texas Alcoholic Beverage Commission to adopt rules implementing the application review and protest process including reasonable timelines, identifying the roles and responsibilities of all parties involved in the process, and identifying potential avenues for mediation or informal dispute resolution.

No other rules or statutes are affected by the proposed rules.

§33.50. Purpose and Authority.

This subchapter implements and is authorized by Alcoholic Beverage Code §§11.43 through 11.432.

§33.51. Definitions.

The following terms have the following meanings when used in this subchapter:

(1) "Commission" - the Texas Alcoholic Beverage Commission as an agency of the State of Texas, and not to the Commissioners, either individually or as a body.

(2) "Complaint" - a written expression of concern regarding a person or business that holds or has applied for a TABC license or permit, or a person or business that the complainant believes is violating the Alcoholic Beverage Code or laws related to alcoholic beverages. Complaints are handled according to §31.11 (relating to Resolution and Information on Complaints). A complaint is not a request for a contested case hearing, does not itself initiate a legal proceeding, and does not afford any legal rights or party status to the complainant. Any person can file a complaint at any time.

(3) "Protest" - a written request for an administrative contested case hearing in which the protestant will participate as a party and present evidence to a trier of fact to prove that a license or permit should not be issued or renewed as proposed. A protest will only be granted if filed by a person with legal standing and supported by reasonable grounds.

(4) "Reasonable grounds" - allegations or concerns regarding a matter within the commission's jurisdiction that are supported by credible evidence or information, and includes the circumstances described in Alcoholic Beverage Code §§11.46 through 11.481, 61.42 through 61.46, and 61.50.

(5) "Received" - An application for a new license or permit or a renewal is considered received on the date the commission updates

its public database to show the application as pending. An application is designated as pending only when the application is complete, meaning that the commission has received all required information and fees.

(6) "SOAH" - the State Office of Administrative Hearings.

(7) "Uncontested" - An application is uncontested if no valid protests have been timely filed or if all valid protests have been withdrawn.

§33.52. Computation of Time.

(a) When used in this subchapter, the word "days" refers to calendar days, unless otherwise specified.

(b) When computing periods of time prescribed or allowed in this chapter:

(1) the day of the act, event, or default from which the designated time period begins to run is not counted; and

(2) the last day of the time period is counted, unless it is a day on which the TABC's headquarters in Austin is closed, in which case the time period will end on the next day the TABC's headquarters is open.

§33.53. Applicable Rules.

Unless otherwise indicated, an application for a license or permit is subject to the rules in effect as of the date the application is received.

§33.54. Delegation of Application Approvals.

The commission delegates to the executive director or their designee the authority to approve an uncontested license or permit application pursuant to Alcoholic Beverage Code §11.43(d).

§33.55. Conditional Approval.

(a) Unless the exception in subsection (b) of this section applies, the commission shall not issue a new license or permit until 15 days have elapsed since the commission updated its public database to show the application as pending.

(b) If the executive director determines that there is a compelling reason to issue a license or permit before 15 days have elapsed since the commission updated its public database to show the application as pending, the executive director may grant conditional approval of the license or permit. If no valid protests are filed at the end of the 15-day period, the license or permit becomes approved by operation of law. If one or more valid protests are filed before the time period for filing protests has expired, the conditional approval is revoked and the executive director shall provide notice of the revocation to the applicant.

(c) An applicant who chooses to proceed with operations while subject to a conditional approval does so at its own risk of loss in the event that the conditional approval is revoked and it fails to obtain the necessary license or permit. An applicant who fails to obtain the necessary permit following conditional approval will have its applications fees refunded in full.

§33.56. Alternative Dispute Resolution.

(a) At any time prior to or during a contested case hearing, any party in a disciplinary matter may request referral to alternative dispute resolution (ADR).

(b) Parties may agree to mediate a dispute through a mediator employed by the State Office of Administrative Hearings or through a private mediator. Mediation through SOAH is subject to SOAH's rules for mediation (Title 1 Texas Administrative Code); the Administrative Procedure Act (Tex. Gov't Code Ch. 2001); laws relating to SOAH administrative procedure in Tex. Gov't Code Ch. 2003; and Tex. Gov't Code Ch. 2009, relating to ADR for use by governmental bodies.

(c) If the parties elect to use a private mediator:

(1) the participants must unanimously agree to use a private mediator;

(2) the participants must unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator must agree to be subject to all time limits imposed by the executive director, the administrative law judge, statute, or regulation.

(d) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon in writing by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity.

(e) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

§33.57. Application Withdrawn.

(a) An applicant may withdraw its application at any time prior to issuance or renewal of the license or permit that is the subject of the application or the denial of the application.

(b) If an applicant fails to respond to requests from the TABC for additional information or for remittance of a license or permit fee within ten (10) business days of the request, the TABC may consider the application withdrawn by the applicant.

(c) An application that is withdrawn is not considered denied and may be refiled at any time. Withdrawal of an application, whether affirmatively by the applicant or due to the applicant's failure to respond to requests for information or fees, does not trigger the right to appeal or any other due process rights.

§33.58. Management Review.

(a) At any time, the executive director or person to whom he or she delegates authority may place a management review on a license or permit, address, or person so that upon receipt of an application, an issue of concern within the agency's jurisdiction is addressed.

(b) An application remains pending until the management review is resolved and removed.

(c) A license or permit holder may continue to operate under its current license or permit while a management review related to its renewal application is pending.

(d) A license or permit holder may not surrender its existing license or permit while it is subject to a management review but may withdraw its renewal application.

§33.59. Denial of Application after Referral of Protest for Hearing.

(a) In the event that a valid protest results in referral for hearing under Alcoholic Beverage Code §11.43(f) and that the executive director subsequently identifies at least one legal ground to deny the application, the executive director shall request that the application be remanded to the commission from the State Office of Administrative Hearings and upon remand, shall recommend to the commission that the application be denied, as required by Alcoholic Beverage Code §11.43(g).

(b) Concurrent with the request for remand from SOAH, the executive director shall provide notice to each protestant that:

(1) the executive director will be recommending denial of the application to the commission;

(2) the case will be remanded to TABC for processing under §11.43(g), *et seq.;*

(3) if the applicant does not request a hearing on the denial recommendation, the application will be sent to the commission for a vote on denial; and

(4) if the applicant requests a hearing on the denial recommendation or the commission declines to deny the permit, the application shall be referred to SOAH for a hearing in which the protestant(s) are parties.

(c) If the executive director recommends to the commission that an application be denied and a valid protest has been referred for hearing and not withdrawn, the commission may only deny the application or refer it back to SOAH for a hearing on the previously referred protest(s).

§33.60. Request for Hearing on Recommendation of Application Denial.

(a) If the executive director recommends denial of an application for a license or permit, notice of the recommendation shall be transmitted to the applicant by the commission.

(b) An applicant may request an administrative hearing on the executive director's denial recommendation by filing a written request for hearing with the commission within thirty (30) days of the date on the notice of the denial recommendation.

(c) A request for hearing under this section must be filed by mail to Texas Alcoholic Beverage Commission, ATTN: Clerk, P.O. Box 13127, Austin, Texas, 78711 or by electronic mail to clerk@tabc.texas.gov.

(d) If the applicant files a timely request for hearing, the executive director will refer the application to SOAH for a hearing pursuant to Alcoholic Beverage Code §11.43(h).

(e) If the applicant does not file a timely request for hearing, the recommendation for denial of the application will be set for consideration by the commission at the next available regular commission meeting.

§33.61. Commission Action on Contested Applications.

(a) This section applies to the application review process in Alcoholic Beverage Code §11.43(h) and §61.31(b).

(b) Except as provided by subsection (c) of this section, the executive director shall place all proposals for decision issued by an administrative law judge under Alcoholic Beverage Code §11.43(h) on a consent agenda for commission vote. If the commission votes to approve a contested application by consent, the executive director shall issue the license or permit.

(c) The executive director shall set a proposal for decision issued by an administrative law judge under Alcoholic Beverage Code §11.43(h) for individual consideration on the commission's regular agenda at the request of:

(1) the presiding officer of the commission; or

(2) at least two commission members.

§33.62. Filing a Protest of a License or Permit Application.

(a) A protest of a license or permit application must be:

(1) filed by a person or persons with legal standing to contest the issuance or renewal of the license or permit under Alcoholic Beverage Code §§11.431, 11.432, 61.313, or 61.314;

(2) timely filed according to subsection (b) of this section;

(3) in writing;

(4) submitted in at least one of the following manners:

(A) through the TABC's online protest tool, if available;

(B) by mailing either a completed TABC protest form, available on the TABC website, or a letter that meets the requirements of subsection (c) of this section to the Texas Alcoholic Beverage Commission, ATTN: Licensing Protest Coordinator, P.O. Box 13127, Austin, Texas, 78711; or

(C) by e-mailing either a completed TABC protest form, available on the TABC website, or a letter that meets the requirements of subsection (c) of this section to the protest email address for the TABC Region in which the applicant premises is located, as follows:

(i) Protests_Reg1@tabc.texas.gov

(ii) Protests_Reg2@tabc.texas.gov

(iii) Protests_Reg3@tabc.texas.gov

(iv) Protests_Reg4@tabc.texas.gov; or

(v) Protests_Reg5@tabc.texas.gov; and

(5) complete, including all information required by this rule.

(b) A protest must be filed within the following time limits:

(1) For an application for an original license or permit or a change of location under Alcoholic Beverage Code §11.08, a protest is timely if it is filed between 60 days prior to and 15 days after the date the commission deems the application complete. When an application is deemed complete, the commission will update its public database to show the application as pending.

(2) For an application for renewal of a license or permit, a protest is timely filed if it is filed within 60 days prior to the expiration date of the license or permit, up to the expiration date.

(c) A protest filed by a member of the public must include the following elements:

(1) the first and last name and physical address of the property of the person or persons filing the protest;

(2) the approximate distance of the person's home from the premises or proposed premises;

(3) contact information for the person filing; and

(4) all reasonable grounds that are the basis for the protest.

(d) A protest filed by a government official must include the following elements:

(1) the name of the official, the office held, and contact information;

(2) a description of the geographic limits of the official's jurisdiction; and

(3) the basis or bases for the protest.

(e) A protest that fails to meet any of the requirements of this rule may be rejected. A person whose protest is rejected may refile the protest with corrections to meet the rule requirements within the time period prescribed by subsection (b) of this section and/or refile the concerns as a complaint at any time, according to §31.10 (relating to Filing a Complaint). The determination of the validity of a protest

is not a contested case subject to the Texas Administrative Procedure Act (Tex. Gov't Code Ch. 2001).

§33.63. Withdrawal of Protest.

(a) A protestant may withdraw their protest at any time prior to the commission's final decision. Withdrawal of a protest may not be subject to any conditions.

(b) A withdrawal of a protest must be submitted in writing to the Texas Alcoholic Beverage Commission, ATTN: Licensing Protest Coordinator, P.O. Box 13127, Austin, Texas, 78711, or to the protest email address for the TABC Region in which the applicant premises is located, as follows:

(1) Protests_Reg1@tabc.texas.gov

(2) Protests_Reg2@tabc.texas.gov

(3) Protests_Reg3@tabc.texas.gov

(4) Protests_Reg4@tabc.texas.gov; or

(5) Protests_Reg5@tabc.texas.gov.

(c) The protestant should also transmit a copy of the withdrawal to the applicant.

(d) If all protests have been withdrawn, the executive director may grant the application and issue the license or permit, subject to other applicable statutes or rules.

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 July 30, 2020.

TRD-202003094
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3451

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CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of Chapter 45, Marketing Practices, §§45.1 - 45.19, 45.41 - 45.51, 45.71 - 45.91, 45.94, and 45.96 (subchapters A - C), effective Dec. 31, 2020. New §§45.1 - 45.50 (subchapters A - E), relating to registration of alcoholic beverage products, are proposed concurrently with the proposal of these repeals.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted House Bill 1545, which amended Alcoholic Beverage Code (Code) §§101.67 and 101.671 and added §101.6701. These statutes bring Texas alcoholic beverage label requirements more in line with the requirements for Certificates of Label Approval (COLAs) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB). The TABC must adopt rules implementing these statutory provisions by their effective date, December 31, 2020.

Commission staff determined that the most efficient way to execute the required rule overhaul is to repeal the existing applicable subchapters and replace them with a new set of rules organized in a more intuitive and streamlined manner. The commission proposes that these repeals become effective on Dec. 31, 2020, concurrent with the effective date of the proposed replacement rules.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed repeals will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeals.

Rural Communities Impact Assessment

The proposed repeals will not have any material adverse fiscal or regulatory impacts on rural communities. The repeals will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed repeals will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed repeals. Some small and micro-businesses will see their net fees paid decrease because the requirement to pay separately for different containers has been eliminated. For example, a producer who used to pay $25 each for label approvals for a 12-ounce can, 12-ounce bottle, and 16-ounce can of a malt beverage, for a total of $75, would pay only one $25 fee for all three container types and sizes under the proposed rule.

Takings Impact Assessment

The proposed repeals do not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeals would be in effect, the public would benefit due to faster processing times for product registration, allowing a greater variety of products to reach the consumer market in an expeditious manner. Additionally, regulated entities will benefit from a much more streamlined agency procedure for registration of new products by spending less time and energy in application processes and getting new products to market quickly. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed repeals. The analysis addresses the first five years the proposed amendments would be in effect. The proposed repeals neither create nor eliminate a government program. The proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeals requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules are not expected to result in a significant change in fees paid to the agency. The proposed repeals do not create new regulations; rather, they decrease the number of regulations related to product registration by more than half. The proposed repeals do not

expand the applicability of any rules or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed repeals are not anticipated to have any material impact on the state's overall economy. The repeals are part of an effort that will streamline the production registration process, adding to the state's advantages of a business-friendly environment and large customer base for alcoholic beverage manufacturers.

Comments on the proposed repeals may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeals on August 25, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

SUBCHAPTER A. REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

16 TAC §§45.1 - 45.19

Statutory Authority

The proposed repeals are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code, and §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

The proposed repeals implement §§101.67(f) and 101.671(d), Alcoholic Beverage Code.

The proposed repeals do not impact any other statutes or rules.

§45.1. Authority and Scope.
§45.2. Definition.
§45.3. Alteration of Labels.
§45.4. Bottle Cartons, Booklets, and Leaflets.
§45.5. Labels: Prohibited Practices.
§45.6. Container and Fill Standards Required.
§45.7. Standard Liquor Bottles.
§45.8. Standards of Fill.
§45.9. Design and Fill Exceptions.
§45.10. Withdrawal from Customs Custody.
§45.11. Advertising: Standards Required.
§45.12. Advertisement Defined.
§45.13. Advertising: Mandatory Statements.
§45.14. Advertising: Lettering.
§45.15. Advertising: Prohibited Statements.
§45.16. Damaged Stock.
§45.17. Intrastate Bottling.
§45.18. Exhibiting Authority.
§45.19. Certificate of Registration.

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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Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3451

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SUBCHAPTER B. REGISTRATION AND ADVERTISING OF WINE

16 TAC §§45.41 - 45.51

Statutory Authority

The proposed repeals are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the commission by rule to establish procedures for: (1) accepting federal certificates of label approval for registration of alcoholic beverage products; (2) registering alcoholic beverage products that are not eligible to receive a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau; (3) registering alcoholic beverage products during periods when the United States Alcohol and Tobacco Tax and Trade Bureau has ceased processing applications for a certificate of label approval; and (4) accepting proof that a permittee is the primary American source of supply of a product or brand.

The repeals implement Alcoholic Beverage Code §§101.67(f) and 101.671(d).

The proposed repeals do not impact any other statutes or rules.

§45.41. Authority and Scope.
§45.42. Definitions.
§45.43. Coined Names.
§45.44. Containers.
§45.45. Certificate of Registration.
§45.46. Label: Prohibited Statements.
§45.47. Customs Custody.
§45.48. Advertising.
§45.49. Advertising: Prohibited Statements.
§45.50. Examination.
§45.51. Illicit Beverage.

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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Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3451

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SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §§45.71 - 45.91, 45.94, 45.96

Statutory Authority

The proposed repeals are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the commission by rule to establish procedures for: (1) accepting federal certificates of label approval for registration of alcoholic beverage products; (2) registering alcoholic beverage products that are not eligible to receive a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau; (3) registering alcoholic beverage products during periods when the United States Alcohol and Tobacco Tax and Trade Bureau has ceased processing applications for a certificate of label approval; and (4) accepting proof that a permittee is the primary American source of supply of a product or brand.

The repeals implement Alcoholic Beverage Code §§101.67(f) and 101.671(d).

The proposed repeals do not impact any other statutes or rules.

§45.71. Definitions.
§45.72. Authority and Scope.
§45.73. Label: General.
§45.74. Misbranding.
§45.75. Mandatory Label Information for Malt Beverages.
§45.76. Brand Names.
§45.77. Class and Type.
§45.78. Name and Address.
§45.79. Alcoholic Content.
§45.80. Net Contents.
§45.81. General Requirements for Malt Beverages.
§45.82. Prohibited Practices.
§45.83. Label Approval and Release.
§45.84. Relabeling.
§45.85. Approval of Labels.
§45.86. Exhibiting Certificates to Representatives of the Commission.
§45.87. Advertisement Defined.
§45.88. Advertisement: Mandatory Statement.
§45.89. Advertisement: Legibility of Requirements.
§45.90. Advertisement: Prohibited Statements.
§45.91. Exports.
§45.94. Verification Regarding Use of Facilities.
§45.96. Brewpubs.

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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Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3451

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CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new Chapter 45, Marketing Practices, §§45.1 - 45.12, 45.20 - 45.27, 45.30, 45.40 - 45.43, and 45.50 (subchapters A - E), relating to registration of alcoholic beverage products. The repeal of existing §§45.1 - 45.19, 45.41 - 45.51, 45.71 - 45.91, 45.94, and 45.96 (subchapters A - C) is proposed concurrently with this rulemaking package.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted House Bill 1545, which amended Alcoholic Beverage Code (Code) §§101.67 and 101.671 and added §101.6701. These statutes bring Texas alcoholic beverage label requirements more in line with the requirements for Certificates of Label Approval (COLAs) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB).

Code §§101.67(f) and 101.671(d) require the agency to adopt rules establishing procedures for:

1. accepting federal COLAs for product registration;

2. registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB;

3. registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown); and

4. accepting proof, such as a letter of authorization, that a permittee is the primary American source of supply of the product or brand.

The TABC must adopt rules implementing these statutory provisions by their effective date, December 31, 2020.

Commission staff determined that the most efficient way to execute the required rule overhaul is to repeal the existing applicable subchapters and replace them with a new set of rules organized in a more intuitive and streamlined manner. Some rules did not require changes and have been migrated into the most logical place in the new rule subchapters. Current Chapter 45, subchapters D and E were not affected by the legislation, have not been altered, and will be re-designated as subchapters F and G. Where current rules referenced the commission "administrator," that term has been updated to "executive director," consistent with the Code and other commission rules.

The commission proposes that these rules become effective on December 31, 2020, concurrent with the repeal of the current rules.

Section by Section Discussion

Subchapter A: General Provisions

§45.1. Statutory Authority and Applicability.

The commission proposes new §45.1 to provide the statutory basis for new subchapters A - E (§§45.1 - 45.12, 45.20 - 45.27, 45.30, 45.40 - 45.43, 45.50) and specify those types of alcohol products to which the chapter does not apply.

§45.2. Definitions.

The commission proposes new §45.2 to provide definitions of terms used in Chapter 45.

§45.3. General Prohibition.

The commission proposes new §45.3 to provide a clear and concise rule prohibiting persons from importing into the state, manufacturing and offering for sale, or distributing or selling an alcoholic beverage product in Texas in a manner that does not comply with all applicable requirements in Chapter 45.

§45.4. Product Registration Required.

The commission proposes new §45.4 to provide a clear and concise general product registration requirement for alcoholic beverage products in Texas with the exception of products sold: (1) in compliance with Code §101.6701 by holders of brewer's permits and manufacturer's licenses authorized to sell directly to consumers under Code §§12.052 or 62.122; (2) by holders of brewpub licenses except for malt beverages sold under the authority of Code §§74.08 or a distributor under 74.09; and (3) pursuant to out-of-state winery direct shipper's permits under Chapter 54 of the Code. This requirement and the exceptions currently exist across other statutes and/or rules.

§45.5. Denial of Product Registration.

The commission proposes new §45.5 to provide a list of the reasons the commission can deny an application for product registration for any alcoholic beverage type (additional reasons for denial of a malt beverage product registration are listed in a later rule). These reasons are: (1) the product label does not meet applicable federal requirements; (2) registration of the product would create a cross-tier violation; (3) the label includes a statement, design, device, or representation that is obscene or indecent; (4) the commission determines the product would create a public safety concern; or (5) the commission determines the product violates any other section of the Code. The proposed rule further specifies that if a registration application is denied, the applicant may not import, manufacture, or sell the product using the denied label.

§45.6. Revocation of Registration.

The commission proposes new §45.6 to provide that the commission may revoke product registration if the registration was granted due to an error; if new information arises that would cause the agency to deny the application; or if the label was issued on contingency that the applicant fulfill certain conditions, and the conditions were not fulfilled.

§45.7. Time Limitation for Processing Product Registration Application.

The commission proposes new §45.7 to add to the commission's rules the new requirement of Code §101.67(e) that the commission either approve or deny a product registration application within 30 days of receipt. The proposed rule further clarifies that an application is only "received" when all required information and fees have been received by the commission.

§45.8. Protest.

The commission proposes new §45.8 to add to the commission's rules the provision of Code §101.67 that an applicant whose product registration application with a valid COLA is either not acted upon within the 30-day time limit or is denied has the right to a hearing before the State Office of Administrative Hearings. The rule would further provide procedures for requesting such a hearing, including a 10-day deadline to file the request from either the notification of application denial or the expiration of the 30-day period for the commission to act.

§45.9. Withdrawal of Application.

The commission proposes new §45.9 to provide that an applicant may withdraw its application at any time before the application is either granted or denied.

§45.10. Application Fee.

The commission proposes new §45.10 contain the application fee of $25 (the current fee) and require that the fee be paid at the time the application is filed. The various rule provisions that previously contained the $25 fee and requirement for payment at the time of application separately for different alcoholic beverage types will be contemporaneously repealed.

§45.11. When Reapplication is Required.

The commission proposes new §45.11 to outline the circumstances in which a product registration is no longer valid and an applicant must submit a new registration application to the commission. The proposed rule would require a new application for registration for a product with a COLA any time a change is made to the label that would require reapplication with the TTB for the COLA. Changes on the TTB's list of allowable changes that do not require reregistration are listed in the rule. Finally, the proposed rule requires currently-registered products eligible for a COLA to obtain a COLA and reapply for registration, but allows a two and one-half year grace period from the effective date of this proposed rule to reapply for those particular products. The grace period allows time for producers to sell current inventory, design a new label, obtain a COLA, and print new labels. For those producers for whom that time period is not adequate to use up already printed containers, the rule provides that the executive director may issue a temporary Certificate of Registration to allow the necessary additional time.

§45.12. Application Procedures During Interruption of Federal Agency Operations.

The commission proposes new §45.12 to lay out procedures for the agency to continue registering products that would normally require a COLA from the TTB at times when the TTB is not issuing COLAs, such as during a federal government shutdown. This rule is required by new §101.67(f)(3) of the Code. During such times, the proposed rule provides that the commission will apply TTB COLA and COLA exemption standards to applications received and will register (or exempt), on a provisional basis, products that meet those standards.

The proposed rule would require a product with a provisional registration to apply for and receive a COLA within 30 days of the TTB resuming processing COLA applications, then re-apply for registration with the commission within 30 days of receiving the federal COLA. A provisional registration would expire on the 31st day after the TTB resumes processing COLA applications, unless the applicant has filed an application with the TTB, in which case the provisional registration remains in effect until 30 days after the federal COLA is issued to allow time for the applicant to re-apply with the commission and register the product. If the

TTB denies an applicant's COLA or exemption application, the proposed rule would require the applicant to notify the commission of that denial within five days of receipt of the denial. The TTB's denial of an application for a COLA may result in the revocation of the provisional product registration.

Subchapter B: Enforcement

§45.20. Exhibiting Certificates to Representatives of the Commission.

The commission proposes to move the content of existing §45.86 (related to malt beverages) to new §45.20. New §45.20 would apply to all types of alcoholic beverages and therefore provides the analogous requirement for distilled spirits in current §45.18. Both §45.18 and §45.86 would be repealed concurrent with the effectiveness of this rule. The rule states that it is unlawful for a person to fail or refuse to exhibit a TTB COLA or other commission product registration upon request by an authorized commission representative. The current rules cited contain this requirement for distilled spirits and malt beverages, but the requirement appears to have been inadvertently omitted in the current subchapter regarding wine. In its new position within the enforcement rules subchapter, the rule would apply to all three categories of alcoholic beverages. This does not represent a practical difference for regulated entities, however, as analogous federal rules require the same (27 C.F.R. §4.51).

§45.21. Examination and Testing of Product.

The commission proposes to move the content of current §45.50(a) to new §45.21. Section 45.50 would be repealed concurrent with the effectiveness of this rule. The rule authorizes the agency to take samples of alcoholic beverages for examination whenever deemed necessary by the executive director and provides that examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the code and the rules of the commission. The current rule cited contains this requirement for wine, but the requirement appears to have been inadvertently omitted in the current subchapters regarding distilled spirits and malt beverages. In its new position within the enforcement rules subchapter, the rule would apply to all three categories of alcoholic beverages.

§45.22. Additional Provisions for the Examination of Wine.

The commission proposes to move current §45.50(b), (c), and (d) to new §45.22. These subsections are unchanged and continue to apply only to wine. Section 45.50 would be repealed concurrent with the effectiveness of this rule.

§45.23. Alteration of Labels.

The commission proposes to move the content of current §45.3 and §45.73(c)(1), prohibiting the alteration of labels, to new §45.23. Sections 45.3 and 45.73 would be repealed concurrent with the effectiveness of this rule. The current rules cited contain this requirement for distilled spirits and malt beverages, but the requirement appears to have been inadvertently omitted in the current subchapter regarding wine. In its new position within the enforcement rules subchapter, the rule would apply to all three categories of alcoholic beverages. This does not represent a practical difference for regulated entities, however, as analogous federal rules require the same for wine (27 C.F.R. §4.30(b)).

§45.24. Records Retention.

The commission proposes new §45.24 to require producers of alcoholic beverages to retain records of lab analyses of contents of each registered product, including alcohol content, until the product is no longer in the stream of commerce in Texas. The records would have to be maintained in a way that they can be provided to the agency upon request. This new rule is necessary for the agency to protect public health and safety and to ensure products are accurately represented to the public, ensuring the quality and purity of alcoholic beverages.

§45.25. Damaged Stock.

The commission proposes to move the content of current §45.16 to new §45.25. The content of the rule is unchanged. Section 45.16 would be repealed concurrent with the effectiveness of this rule.

§45.26. Intrastate Bottling.

The commission proposes to move the content of current §45.17 to new §45.26. The content of the rule is unchanged. Section 45.17 would be repealed concurrent with the effectiveness of this rule.

§45.27. Illicit Beverage.

The commission proposes to move the content of current §45.51 to new §45.27 clarifying that the applies not only to wine but to all types of alcoholic beverages under the statutory definition of "illicit beverage" in Code §1.04(4). The rule would categorize any alcoholic beverage or container that does not meet the Chapter 45 rule requirements as an illicit beverage subject to seizure without a warrant. The rule would further authorize the executive director to dispose of alcoholic beverages seized as a result of accidental shipment or other reasonable mistake and require that all alcoholic beverages that cannot meet the required standards of purity be destroyed.

Subchapter C: Specific Requirements for Distilled Spirits

§45.30. Certificate of Registration for a Distilled Spirit Product.

The commission proposes new §45.30 to provide product registration requirements specifically required for distilled spirits only, as these requirements differ slightly between the three basic classes of alcoholic beverages.

The proposed rule would prohibit shipping into the state or selling a distilled spirit product without first obtaining a Certificate of Registration issued by the commission, as provided by Code §101.671(a). It would also require that an applicant for a Certificate of Registration for a distilled spirit hold either a commission-issued distiller's and rectifier's permit or a nonresident seller's permit. The proposed rule would require that an application include the COLA issued by the TTB, a complete application form, and the application fee per Code §101.671(c).

The proposed rule would move existing §45.19(d) related to providing a legible copy of the COLA, actual label, or exact color copy of the label, without change, to §45.30(d). Section 45.19(d) would be repealed concurrent with the effective date of proposed rule §45.30(d).

Subchapter D: Specific Requirements for Malt Beverages

§45.40. Certificate of Registration for a Malt Beverage Product.

The commission proposes new §45.40 to provide product registration requirements specifically required for malt beverages only, as these requirements differ slightly between the three basic classes of alcoholic beverages. The rule would prohibit ship-

ping into or selling in Texas any malt beverage product without first obtaining a Certificate of Registration from the commission. It would require that an applicant for a Certificate of Registration for a malt beverage hold a brewer's permit, non-resident brewer's permit, manufacturer's license, non-resident manufacturer's license, or brewpub license issued by the commission, and allow holders of a non-resident manufacturer's agent's permit or non-resident brewer's agent's permit to file applications on behalf of any of the other listed license or permit holders.

The proposed rule provides application requirements for malt beverages for which a COLA has been issued and those not eligible for a COLA. For malt beverages with a COLA, the application must include a legible copy of the COLA, as required by Code §101.67(a), an actual label or exact color copy of the beverage label, and all other information required by the commission's application form. For a product not eligible for the COLA, the applicant must provide the actual label or an exact color copy, a copy of the TTB formulation, and all other information required by the commission's application form. Additionally, the proposed rule would require those malt beverages ineligible for a COLA to comply with all applicable federal laws and regulations, which are enumerated in the rule.

§45.41. Additional Reasons for Denial of Registration of a Malt Beverage Product.

The commission proposes new §45.41 to include reasons beyond those listed in §45.5 that the commission may deny an application for registration of a malt beverage product. Subsections 45.41(a)(1) and (2) would be migrated without substantive changes from current §45.73(e) and (f). Subsections 45.41(a)(3) and (b) would be migrated without substantive changes from current §45.96(b)(5) and (6). Current §45.73(e) and (f) and §45.96(b)(5) and (6) would be repealed concurrent with the effective date of these proposed rules.

§45.42. Misbranding.

The commission proposes to move current §45.74(3) to new §45.42 without changes. The requirements of current §45.74(1) and (2) are proposed to be incorporated into new §45.5 because they are generally applicable to all three categories of alcoholic beverages. Current §45.74 would be repealed concurrent with the effective date of these proposed rules.

§45.43. Verification Regarding Use of Facilities.

The commission proposes to move current §45.94 to new §45.43 without changes. Current §45.94 would be repealed concurrent with the effective date of these proposed rules.

Subchapter E: Specific Requirements for Wine

§45.50. Certificate of Registration for Wine.

The commission proposes new §45.50 to provide product registration requirements specifically required for wine only, as these requirements differ slightly between the three basic classes of alcoholic beverages.

The proposed rule would prohibit shipping into the state or selling a wine without first obtaining a Certificate of Registration issued by the commission, as provided by Code §101.671(a). It would also require that an applicant for a Certificate of Registration for a wine hold either a commission-issued winery permit or a non-resident seller's permit. The proposed rule would require that an application include the COLA issued by the TTB, a complete application form, and the application fee per Code §101.671(c).

The proposed rule provides application requirements for wines for which a COLA has been issued and those not eligible for a COLA. For wines with a COLA, the application must include a legible copy of the COLA, as required by Code §101.671, an actual label or exact color copy of the beverage label, and all other information required by the commission's application form. For a wine not eligible for a COLA, the applicant must provide the actual label or an exact color copy, a copy of the TTB formulation, and all other information required by the commission's application form. Additionally, the proposed rule would require those wines ineligible for a COLA to comply with all applicable federal laws and regulations, which are enumerated in the rule.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rules will be in effect, the proposed rules are not expected to have a significant fiscal impact upon the agency. While the agency expects for the number of registration applications to decrease, the impact is difficult to project under the current unprecedented economic conditions. It may become necessary to reevaluate the registration fee when more data is available to maintain revenue neutrality. There are no foreseeable economic implications anticipated for other units of state or local government due to the administration or enforcement of the proposed rules.

Rural Communities Impact Assessment

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. The rules will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rules will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the new rules. Some small and micro-businesses will see their net fees paid decrease because the requirement to pay separately for different containers has been eliminated. For example, a producer who used to pay $25 each for label approvals for a 12-ounce can, 12-ounce bottle, and 16-ounce can of a malt beverage, for a total of $75, would pay only one $25 fee for all three container types and sizes under the proposed rule. Because the proposed rules will not impact small and micro-businesses in a material way, a Small Business and Micro-Business Assessment/Flexibility Analysis is not required.

Takings Impact Assessment

The proposed rules do not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rules would be in effect, the public would benefit due to faster processing times for product registration, allowing a greater variety of products to reach the consumer market in an expeditious manner. Additionally, regulated entities will benefit from a much more streamlined agency procedure for reg-

istration of new products by spending less time and energy in application processes and getting new products to market quickly. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rules. The analysis addresses the first five years the proposed amendments would be in effect. The proposed rules neither create nor eliminate a government program. The proposed rules do not require the creation of new employee positions or the elimination of existing employee positions. The agency anticipates that the provisions of this rule will be absorbed using existing agency resources. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules are not expected to result in a significant change in fees paid to the agency. Several of the proposed rules create new regulations because they constitute new state agency statements of general applicability that implement, interpret, or prescribe law or policy and describe procedures and practice requirements of a state agency. Other proposed rules re-adopt current rules in a new place or combine current rules in order to streamline the rule chapter. The proposed rules do not expand the applicability of any rules or increase the number of individuals subject to the existing rules' applicability beyond the current rule requirements or analogous federal requirements, as noted in the Section by Section analysis, above.

The new rules are proposed concurrently with the repeal of current rules §§45.1 - 45.19, 45.41 - 45.51, 45.71 - 45.91, 45.94, and 45.96. However, many of the rules proposed to be repealed are re-adopted or combined with other rules in order to streamline and optimize the new chapter. Rules that are proposed to be repealed and not re-adopted or otherwise incorporated into the proposed new rules are proposed for repeal as required to implement House Bill 1545 (86th Tex. Leg. R.S., 2019).

The proposed rules are not anticipated to have any material impact on the state's overall economy. Adopting standards that are equivalent to the federal government's and streamlining the application process add to the advantages of the state's business-friendly environment and large customer base as reasons for alcoholic beverage manufacturers to locate or expand within Texas.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to *rules@tabc.texas.gov.* Written comments will be accepted for 30 days following publication in the *Texas Register.*

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rules on August 25, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§45.1 - 45.12

The proposed new rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

The proposed rules do not impact any other statutes or rules.

§45.1. Statutory Authority and Applicability.

(a) This chapter implements Alcoholic Beverage Code §§101.67 and 101.671, which provide for the registration of alcoholic beverage products with the state.

(b) This chapter does not apply to:

(1) distilled spirits for export or for industrial use;

(2) wine produced pursuant to §109.21, Alcoholic Beverage Code;

(3) wine that is to be exported in bond;

(4) malt beverages in bond; or

(5) malt beverages manufactured for sale exclusively outside this state.

§45.2. Definitions.

When used in this chapter, the terms listed below shall have the following meanings:

(1) Alcoholic beverage--Alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted, including distilled spirits, malt beverages, and wine, as defined herein.

(2) Ale--Any malt beverage containing more than 4.0% of alcohol by weight. In this chapter, "malt liquor" and "ale" have the same meaning.

(3) Applicant--A person who submits an application with the commission to register an alcoholic beverage product.

(4) Bottler--Any person who places alcoholic beverages in containers.

(5) Brand label--The label carrying, in the usual distinctive design, the brand name of the alcoholic beverage.

(6) Brewpub--A holder of a brewpub license under Chapter 74 of the Alcoholic Beverage Code.

(7) Code--The Texas Alcoholic Beverage Code.

(8) COLA--A certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau pursuant to 27 CFR Ch. I, Subch. A, Part 13.

(9) Commission--The state agency, the Texas Alcoholic Beverage Commission; this term is not intended to refer to the agency's commissioners sitting as a deliberative body.

(10) Container--Any can, bottle, barrel, keg, cask, tank car, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt alcoholic beverages. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.

(11) Distilled spirits--Alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, other distilled

spirits, and any liquor produced in whole or in part by the process of distillation, including all mixtures and dilutions thereof.

(12) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(13) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight. In this chapter, "malt liquor" and "ale" have the same meaning.

(14) Person--A natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(15) Producer--A manufacturer of all classes of alcoholic beverages or a nonresident seller that is the primary American source of supply for purposes of §37.10 of the Code.

(16) TTB--The United States Alcohol and Tobacco Tax and Trade Bureau or its successor agency.

(17) Wine--A product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers and other alcoholic beverages made in the manner of wine, including sparkling and carbonated wine, vermouth, cider, sake, and perry.

§45.3. General Prohibition.

No person may ship or import into the state, manufacture and offer for sale, or distribute or sell an alcoholic beverage product in this state in a manner that does not comply with all applicable requirements of this chapter.

§45.4. Product Registration Required.

(a) Except as provided by subsection (b) of this section, no alcoholic beverage product may be shipped or imported into the state, manufactured and offered for sale, or distributed or sold in the state until the product is registered with the commission.

(b) Product registration is not required for products sold:

(1) in compliance with Code §101.6701 by holders of brewer's permits and manufacturer's licenses authorized to sell directly to consumers under Code §§12.052 or 62.122;

(2) by holders of brewpub licenses except for malt beverages sold under the authority of Code §§74.08 or a distributor under 74.09; and

(3) pursuant to out-of-state winery direct shipper's permits under Chapter 54 of the Code.

§45.5. Denial of Product Registration.

(a) The commission may deny an application for product registration for one or more of the following reasons:

(1) the product label does not meet applicable federal requirements;

(2) registration of the product would create a cross-tier violation;

(3) the label includes a statement, design, device, or representation that is obscene or indecent;

(4) the commission determines the product would create a public safety concern; or

(5) the commission determines the product violates any other section of the Code.

(b) If the commission denies an application to register a product, the applicant is prohibited from shipping or importing into or within the state, manufacturing or offering for sale, or distributing or selling the product in the state using the denied label.

§45.6. Revocation of Registration.

The commission may revoke product registration at any time if the registration was granted in error; if the commission receives new information supporting a denial under §45.5 of this title; or if the registration was issued subject to conditions and the conditions were not satisfied by the deadline.

§45.7. Time Limitation for Processing Product Registration Application.

(a) Not later than the 30th day after the date the commission receives an application for registration of a product under this section, the commission shall either approve or deny the registration application.

(b) For purposes of this chapter, an application is received only when all required information has been received by the commission. An incomplete application is not considered received.

§45.8. Protest.

(a) If the commission denies the application for a product with a valid COLA or fails to act on the application within the time required by §45.7 of this title, the applicant is entitled to an administrative hearing before the State Office of Administrative Hearings.

(b) To request a hearing under this chapter, the applicant must file a written request for hearing with the commission within ten (10) business days of:

(1) receiving notification from the commission that product registration has been denied; or

(2) the expiration of the time limit for commission action, if the commission has not either approved or denied the application.

§45.9. Withdrawal of Application.

An applicant may unconditionally withdraw their application for product registration at any time prior to product registration or issuance of a notification of denial.

§45.10. Application Fee.

(a) The fee for an application for registration under this chapter is $25 and shall be paid at the time the application is filed.

(b) An applicant for product registration under this chapter is not entitled to a refund of the application fee for any reason.

§45.11. When Reapplication is Required.

(a) For products registered with the commission using a federal COLA, any change to the label or product that requires issuance of a new COLA requires reapplication for product registration with the commission.

(b) For products registered with the commission that are not eligible for a federal COLA, any change to the label or product requires reapplication for product registration with the commission, except for the following permissible label revisions:

(1) Deleting any non-mandatory label information, including text, illustrations, graphics, and ingredients;

(2) Repositioning any label information, including text, illustrations, and graphics;

(3) Changing the color of the background or text, the shape, or the proportionate size of labels;

(4) Changing the type size or font or make appropriate changes to the spelling (including punctuation marks and abbreviations) of words;

(5) Changing the type of container or net contents statement;

(6) Adding, deleting, or changing optional information referencing awards, medals or a rating or recognition provided by an organization as long as the rating or recognition reflects simply the opinion of the organization and does not make a specific substantive claim about the product or its competitors;

(7) Adding, deleting, or changing holiday or seasonal-themed graphics, artwork, or salutations;

(8) Adding, deleting, or changing promotional sponsorship-themed graphics, logos, artwork, dates, event locations or other sponsorship-related information; and

(9) Adding, deleting or changing references to a year or date.

(c) Not later than September 1, 2023, producers of products registered with the commission prior to December 31, 2020, must reapply for commission registration of any such product that will be shipped or imported into the state, manufactured and offered for sale, or distributed or sold on or after September 1, 2023, unless granted an exception under subsection (d) of this section.

(d) The executive director may issue a temporary Certificate of Registration containing an expiration date at the request of a producer demonstrating that the producer requires additional time beyond September 1, 2023, to use up products bearing labels approved by the commission and printed before December 31, 2020.

§45.12. Application Procedures During Interruption of Federal Agency Operations.

(a) In the event of a federal government shutdown or other interruption in service that prevents the TTB from issuing COLAs, the commission shall evaluate applications using the federal standards required for the applicant to receive a COLA or the federal exemption from the COLA requirements, if applicable.

(b) If the applicant meets the applicable federal standards, the commission shall register the product on a provisional basis.

(c) An applicant whose product has been registered with the state on a provisional basis shall apply for a COLA or any applicable federal exemption from COLA requirements within 30 days of the resumption of services of the TTB.

(d) The provisional registration with the state shall expire automatically on the 31st day after the resumption of services of the TTB, unless the applicant has timely filed an application with the TTB. If the applicant timely filed an application with the TTB, the applicant's provisional registration shall continue in effect either:

(1) if the TTB denies the applicant's COLA or exemption application, until the notice of that denial is issued by the TTB; or

(2) if the TTB issues the COLA or grants the exemption, until 30 days after the COLA or exemption is issued.

(e) If the TTB grants the COLA or exemption application, the applicant must re-apply with the commission for product registration within 30 calendar days of receipt of the federal COLA or exemption.

(f) If the TTB denies the COLA or exemption application, the applicant shall notify the commission within five calendar days of receipt of the denial. The commission may revoke the provisional product registration in the event of COLA or exemption denial by the TTB.

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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Shana Horton
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Texas Alcoholic Beverage Commission
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SUBCHAPTER B. ENFORCEMENT

16 TAC §§45.20 - 45.27

The proposed new rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

The proposed rules do not impact any other statutes or rules.

§45.20. Exhibiting Certificates to Representatives of the Commission.

It shall be unlawful for any person to fail or refuse to exhibit, upon demand or request by any authorized representative of the commission, the certificate of approval as issued by the United States Department of the Treasury or the executive director.

§45.21. Examination and Testing of Product.

Samples of alcoholic beverages shall be taken for examination by representatives of the commission whenever deemed necessary by the executive director. Examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the Code and the rules of the commission.

§45.22. Additional Provisions for Examination of Wine.

(a) It shall be unlawful for any producer or bottler of wine to accept as a return or to purchase or to use any container permanently branded or imprinted with the name of another producer or bottler of any alcoholic beverage.

(b) The alcoholic content requirements set forth in this section shall not apply to sacramental or altar wines where ecclesiastical regulations limit the alcoholic content to not more than 18% by volume--provided, however, that such wines shall be labeled as "Sacramental" or "Altar" wines.

(c) It shall be unlawful for any permittee to bring into this state, store, sell, or possess for the purpose of sale, any bottles of wine which are not protected from tampering or contamination by being sealed with seals of a type which must be irreparably mutilated or destroyed before the bottle can be opened. Such seals shall not be made of paper.

§45.23. Alteration of Labels.

No person may alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on an alcoholic beverage product held for sale in this state except:

(1) as authorized by Texas law; and

(2) the executive director may, on written application, permit additional labeling or relabeling of bottled alcoholic beverages with labels covered by certificates of label approval that comply with the requirements of this subchapter and with state law.

§45.24. Records Retention.

(a) Producers of alcoholic beverage products registered in this state shall retain records of laboratory analyses of the contents of each registered product, including tests of alcohol content.

(b) Producers shall maintain records under this section in a manner that they can be made available upon request of the commission.

(c) Producers shall maintain records under this section until the product is no longer in the stream of commerce in the state of Texas.

§45.25. Damaged Stock.

No distilled spirits may be sold or possessed for the purpose of sale in this state which have had fire, smoke, or water damage to the label, container, or contents, unless so authorized by the executive director.

§45.26. Intrastate Bottling.

It shall be unlawful for any distiller, rectifier, or other bottler of distilled spirits in this state to bottle or remove such distilled spirits from his premises unless he has first procured a certificate of label approval, or clearance of export procedure, from the executive director.

§45.27. Illicit Beverage.

(a) Any alcoholic beverage or container of which does not meet all the requirements of this chapter shall be an illicit beverage and subject to seizure without a warrant.

(b) The executive director may authorize such disposition as facts and circumstances may warrant of any alcoholic beverage that has been seized as the result of an accidental shipment or other reasonable mistake.

(c) All alcoholic beverages which cannot be restored to meet the standards of purity shall be destroyed.

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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Shana Horton
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SUBCHAPTER C. SPECIFIC REQUIREMENTS FOR DISTILLED SPIRITS

16 TAC §45.30

The proposed new rule is authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

The proposed rule does not impact any other statutes or rules.

§45.30. Certificate of Registration for a Distilled Spirit Product.

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.

(b) An applicant for a Certificate under this section must hold a distiller's and rectifier's permit or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an application to register a distilled spirit on the prescribed commission form. The application must contain the following:

(1) the product COLA issued by the TTB;

(2) all information required to complete the application form; and

(3) the application fee.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.

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

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SUBCHAPTER D. SPECIFIC REQUIREMENTS FOR MALT BEVERAGES

16 TAC §§45.40 - 45.43

The proposed new rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

The proposed rules do not impact any other statutes or rules.

§45.40. Certificate of Registration for a Malt Beverage Product.

(a) No malt beverage may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.

(b) An applicant for a Certificate under this section must hold a brewer's permit, non-resident brewer's permit, manufacturer's license, non-resident manufacturer's license, or brewpub license issued by the commission.

(c) Persons holding a non-resident manufacturer's agent's permit or non-resident brewer's agent's permit may file an application for a Certificate of Registration on behalf of a holder of a permit or license listed in subsection (b) of this section.

(d) An applicant must submit an Application to Register a Malt Beverage on the form prescribed by the commission along with the application fee to the commission. The application must contain the following:

(1) If the product is eligible for a COLA:

(A) legible copy of the COLA;

(B) an actual label that is affixed to the malt beverage as shipped or sold, or a legible exact color copy of a label; and

(C) all information required to complete the application form.

(2) If the product is not eligible for a COLA:

(A) an actual label that is affixed to the malt beverage as shipped or sold, or a legible exact color copy of the label;

(B) TTB formulation; and

(C) all information required to complete the application form.

(e) Labels for beverages that meet the definition of malt beverage but are ineligible for a COLA must also comply with 21 C.F.R. Part 101; 27 C.F.R. Parts 16 and 25; 21 U.S.C. §§341-350; 26 U.S.C. Ch. 51; and 27 U.S.C. §215.

§45.41. Additional Reasons for Denial of Registration of a Malt Beverage Product.

(a) In addition to the provisions of §45.5 of this title, the commission may deny registration for a malt beverage for the following reasons:

(1) the label filed with the application by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee:

(A) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or any private club registration permittee; or

(B) includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee;

(2) the brand of malt beverages by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee is exclusive to the holder of a license or permit authorizing the retail sale or service of malt beverages, or exclusive to retail licensees or permittees under common ownership, control, or management, to the exclusion of other retail licensees or permittees; or

(3) with the exception of the brewpub licensee's name, tradename or trademark, the label filed by a brewpub licensee:

(A) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or for any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it); or

(B) includes the name, tradename, or trademark of any retailer permittee or licensee or for of any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it).

(b) Nothing in this subchapter or in Alcoholic Beverage Code Chapter 74 authorizes a brewpub licensee to engage in contract brewing or alternating brewery proprietorship arrangements, and its facilities may not be used to provide such arrangements or engage in such activities, which are authorized only for holders of permits under Alcoholic Beverage Code Chapters 12 or 13 and holders of licenses under Alcoholic Beverage Code Chapters 62 or 63.

§45.42. Misbranding.

Malt beverages in containers shall be deemed to be misbranded if the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a manufacturer, brewer, wholesaler, distributor, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§45.43. Verification Regarding Use of Facilities.

On or before September 1 of each year, each holder of a permit issued under Alcoholic Beverage Code Chapter 12 or 13 or a license issued under Alcoholic Beverage Code Chapter 62 or 63 shall verify to the commission, on a form promulgated by the commission, that no brewing or manufacturing facility owned or controlled by the permit or license holder is used to produce malt beverages primarily for a specific Texas retailer or the retailer's Texas affiliates.

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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Shana Horton
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SUBCHAPTER E. SPECIFIC REQUIREMENTS FOR WINE

16 TAC §45.50

The proposed new rule is authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which requires the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

The proposed rule does not impact any other statutes or rules.

§45.50. Certificate of Registration for Wine.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Wine on the form prescribed by the commission along with the application fee to the commission. The application must contain the following:

(1) If the product is eligible for a COLA:

(A) legible copy of the COLA;

(B) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of a label; and

(C) all information required to complete the application form.

(2) If the product is not eligible for a COLA:

(A) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of the label;

(B) TTB formulation; and

(C) all information required to complete the application form.

(d) Wines with an alcohol content of at least 0.5% but less than 7% are ineligible for a COLA and must adhere to the labeling requirements contained in 21 C.F.R. Part 101; 27 C.F.R. Parts 16, 24, and 27; 21 U.S.C. §§341-350; 26 U.S.C. Ch. 51; and 27 U.S.C. §215.

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 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 138. COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS

SUBCHAPTER A. INDIVIDUAL AND SURVEYOR COMPLIANCE

22 TAC §§138.1, 138.5, 138.7, 138.9, 138.11, 138.13 - 138.15, 138.17

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes new rules to 22 Texas Administrative Code, Chapter 138, Compliance and Professionalism for Land Surveyors, specifically §§138.1, 138.5, 138.7, 138.9, 138.11, 138.13 - 138.15, and 138.17 regarding the renewal process and continuing education for professional land surveyors in Texas. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 138 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, and Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying (TBPLS) into the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

As required by HB 1523, the operations of the two agencies have been merged into one, including the registration and renewal of professional land surveyor registrations. The previous agency rules (22 Texas Administrative Code, Chapters 661 and 664), related to renewal of registrations and continuing education requirements for professional land surveyors, have been merged into Chapter 138 per the guidance of the Secretary of State. These rules have been formatted to be similar to the licensure rules for engineers (Chapter 137) and edited for format and clarity.

SECTION-BY-SECTION SUMMARY

The proposed rules create a new §138.1 concerning license and registration holder titles that are permitted by Occupations Code 1071 and proper title designation for registrants in inactive status.

The proposed rules create a new §138.5 concerning notification to the board of contact, employment, or criminal conviction changes in conformance with Chapter 663 of the surveying rules.

The proposed rules create a new §138.7 concerning the registration renewal and expiration process, including renewal period, fees, and continuing education requirement, in conformance with the requirements of Chapter 1001 and 1071.

The proposed rules create a new §138.9 concerning the registration renewal process for individuals licensed or registered in another jurisdiction, which includes U.S. military members. This section provides the late fees and continuing education requirement, in conformance with the requirements of Chapter 1001 and 1071. This rule also states that the board cannot renew a person's license or registration if the board is notified by the Office of the Attorney General (OAG) that the person is delinquent on child support, unless the OAG certifies that the person has satisfied the requirements of the Texas Family Code pertaining to child support.

The proposed rules create a new §138.11 concerning the registration renewal process for former Texas licensees and registrants who have practiced in another state and are reapplying for licensure or registration in Texas. This proposal includes late fees and continuing education requirement, in conformance with Chapter 1001 and 1071. It removes a barrier to licensure and registration by eliminating the examination requirement in certain circumstances.

The proposed rules create a new §138.13 concerning the inactive status process for registrants in conformance with Occupations Code 1001 and surveying rules in Chapter 661.

The proposed rules create a new §138.14 concerns the process for a registrant or licensee to voluntarily surrender a registration or license.

The proposed rules create a new §138.15 concerning the process to replace a printed license or certificate in conformance with Occupations Code 1071.

The proposed rules create a new §138.17 concerning continuing education requirements for registered and licensed land surveyors, including acceptable activities and the total number of hours required, in conformance with Chapter 1071 and surveying rules Chapter 664. The board removed the requirement for pre-approval of continuing education courses and a registration requirement for continuing education providers to streamline the process and reduce costs for providers and registrants.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule. These proposed rules impose no additional costs. HB 1523 transferred regulatory authority from TBPLS to TBPELS, and these rules merely reflect the transfer of authority.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clear requirements for the efficient and effective registration and renewal of land surveyor licenses and clear requirements for continuing education by TBPELS in accordance with HB 1523 and Texas Occupations Code chapters 1001 and 1071.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the rules related to registration do not make substantive changes to the registration renewal process and have no additional costs for registrants or the agency.

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules.

HB 1532 transferred the regulation of land surveying to TBPELS, and these rules reflect a transfer of that regulatory authority from the former Texas Board of Professional Engineers to the TBPELS out any growth in government. Therefore, for each year of the first five years the proposed rules are in effect, the agency has determined the following:

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

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

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

4. The proposed rules do not require an increase, but will result in a small (<$5000) decrease in fees paid to the agency related to the registration of continuing education courses. This will not have an adverse impact on the overall agency budget.

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

6. The proposed rules do not expand, limit, or repeal a regulation except as provided by HB 1532 which transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the former Board of Professional Land Surveying to the TBPELS.

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

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

TAKINGS IMPACT ASSESSMENT

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

ENVIRONMENTAL RULE ANALYSIS

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

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice,

to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §§1001.101 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071 as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. They are also proposed pursuant to Texas Occupations Code §1001.204, which authorizes the Board to assess fees under Texas Occupations Code chapter 1071 including, but not limited to, registration fees. The provision in §138.9(d), pertaining to extension of time to renew the license or registration for military members, is authorized by Texas Occupations Code §55.003. The provision in §138.9(f), pertaining to license or registration holders with delinquent child support, is authorized by Texas Family Code §232.0135. The provision in §138.9, relating to late renewal by military members, is authorized by Texas Occupations Code §55.002. Section 138.17, which outlines the continuing education requirements, is authorized by Texas Occupations Code §1071.305, which permits the Board to promulgate continuing professional education rules. No other codes, articles, or statutes are affected by this proposal.

§138.1. License Holder Designations.

(a) Pursuant to §1071.002 and §1071.251 of the Surveying Act, a Registered Professional Land Surveyor may use the following terms when representing himself or herself to the public:

(1) "registered professional land surveyor";

(2) "registered land surveyor";

(3) "registered surveyor";

(4) "professional land surveyor";

(5) "professional surveyor"; or

(6) any combination of words with or variation of the terms listed in paragraphs (1) - (5) of this subsection.

(b) Pursuant to §1071.002 and §1071.251 of the Surveying Act, a Licensed State Land Surveyor may use the following terms when representing himself or herself to the public:

(1) "licensed state land surveyor"; or

(2) "licensed state surveyor".

(c) Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.

(d) License holders who have placed their license in an inactive status pursuant to §138.13 of this chapter (relating to Inactive Status) may use the terms in subsections (a) or (b) of this section but must include the term "inactive" or "retired" in conjunction with the designation.

§138.5. Notification of Name Change, Address Change, Employer Change, and Criminal Convictions.

(a) Each license or registration holder shall notify the board in writing not later than 30 days after a change in the person's legal name, personal mailing address, or employment status.

(b) A notice informing the board of a change in employment status shall include, as applicable, the:

(1) full legal trade or business name of the association or employment;

(2) physical location and mailing address of the business;

(3) telephone number of the business office;

(4) type of business (corporation, assumed name, partnership, or self-employment through use of own name);

(5) legal relationship and position of responsibility within the business; and

(6) effective date of this change.

(c) Each license or registration holder shall notify the board in writing not later than 30 days after a misdemeanor or felony criminal conviction, or any sanction is imposed against a licensee by another state's surveying board.

§138.7. License or Registration Expiration and Renewal.

(a) A license or registration holder must renew the license annually to continue to practice land surveying under the provisions of the Surveying Act. If the license or registration renewal requirements are not met by the expiration date of the license or registration, the license or registration shall expire and the license or registration holder may not engage in surveying activities that require a license or registration until the renewal requirements have been met.

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

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

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

(2) the continuing education program documentation as required in §138.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license; and

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

(d) Licenses and registrations will expire on December 31.

(e) A license holder who, at the time of his or her annual renewal, has any unpaid administrative penalty owed to the Board or who has failed to comply with any term or condition of a Consent Order, Agreed Board Order, or a Final Board Order shall not be allowed to renew his or her license or registration to practice surveying until such time as the administrative penalty is paid in full or the term or condition is satisfied unless otherwise authorized by the Consent Order, Agreed Board Order, or a Final Board Order.

§138.9. Renewal for Expired License or Registration.

(a) A license or registration holder may renew a license or registration that has expired for 90 days or less by submitting to the board the required annual renewal fee, a late renewal fee and the continuing

professional education documentation as required in §138.17 of this chapter (relating to Continuing Professional Education).

(b) A license or registration holder may renew a license or registration that has expired for more than 90 days but less than one year by submitting to the board the required annual renewal fee, a late renewal fee and the continuing professional education documentation as required in §138.17 of this chapter.

(c) A license or registration holder may renew a license or registration that has expired for more than one year but less than two years by submitting to the board the required annual renewal fee, a late renewal fee and the continuing professional education documentation as required in §138.17 of this chapter for each delinquent year or part of a year.

(d) A license or registration which has been expired for two years may not be renewed, but the former license holder may apply for a new license or registration as provided in the current Surveying Act and applicable board rules. Military service members, as defined in Texas Occupations Code, §55.001(4), may be granted up to two years of additional time to renew a license or registration.

(e) Annual renewal fees or late renewal fees will not be refunded unless incorrect fee was assessed through a documented procedural error by Board staff.

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

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

§138.11. Expiration and Licensed or Registered in Another Jurisdiction.

(a) A person formerly licensed or registered to practice land surveying in Texas who has moved to another state may apply for a land surveying license or registration in Texas if he or she has been practicing surveying in the other state as a licensed or registered land surveyor for at least two years prior to the date of application

(b) A person meeting the criteria in subsection (a) of this section is exempt from examination requirements.

(c) To apply for renewal, the former license or registration holder meeting the criteria in subsection (a) of this section, must fill out an out-of-state renewal application form, submit documentation demonstrating licensure or registration in the other state, pay a renewal fee that is equal to two times the normally required renewal fee for the license or registration, and submit documentation demonstrating compliance with the continuing education program requirements for an expired license or registration as prescribed in §138.17 of this chapter (relating to Continuing Education Program).

(d) Any license or registration issued to a former Texas license or registration holder under this section shall be assigned a new serial number.

§138.13. Inactive Status.

(a) A license or registration holder may request in writing to change the status of the license or registration to "inactive" at any time. A license or registration holder whose license or registration is inactive may not practice surveying. A license or registration holder who has requested inactive status shall not receive any refunds for licensing or registration fees previously paid to the board.

(b) A license or registration holder whose license or registration is inactive must pay an annual fee as established by the board at the time of the renewal. If the inactive renewal fee is not paid by the date a person's license or registration is to expire, the inactive renewal fee for the expired license or registration shall be increased in the same manner as for an active license or registration renewal fee.

(c) A license holder whose license is inactive is not required to:

(1) comply with the continuing professional education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

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

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

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

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

(4) comply with the continuing professional education requirements for inactive license or registration holders returning to practice as prescribed in §138.17 of this chapter (relating to Continuing Professional Education).

(e) A license or registration holder may claim inactive status and return to active status only once during the year period determined by the renewal schedule of the license or registration. If a license or registration holder claims inactive status and returns to active status during the same annual renewal period, the license or registration holder shall comply with the full continuing professional education requirements for that year.

(f) A license or registration holder claiming inactive status may use any term allowed for an active license or registration holder followed by the term "Inactive" or "Retired" on business cards, stationery and other forms of correspondence. Failure to note inactive status in this manner is a violation of the Acts and board rules and is grounds for disciplinary action by the board.

(g) A license or registration holder on inactive status may provide a reference statement for an applicant for licensure or registration.

(h) Offering or performing surveying services to the public while the license or registration is inactive is a violation of the inactive status and is grounds for disciplinary action by the board.

§138.14. Voluntary Surrender of License or Registration.

(a) A license or registration holder who does not wish to maintain a license or registration, the legal guardian of the license or registration holder, or other legal representative of the license or registration holder may voluntarily surrender the license or registration by submitting a request in writing provided that the license or registration holder:

(1) is in good standing; and

(2) does not have an enforcement case pending before the board.

(b) A license or registration that has been voluntarily surrendered may not be renewed. A license or registration holder who has voluntarily surrendered a license or registration may apply for a new license or registration.

§138.15. Replacement of Printed Licenses or Certificates.

Each license or registration holder will be issued a printed license or registration certificate. A license or registration holder may obtain a new printed license or registration certificate to replace any certificate lost, destroyed, or mutilated or obtain a certificate in a new design by submitting a request in a format prescribed by the Board. Replacement license or registration certificates will reflect the original serial number of the license or registration certificate.

§138.17. Continuing Education.

(a) Each license or registration holder shall meet the Continuing Education (CE) requirements for professional development as a condition for license or registration renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CE activity. PDH is the basic unit for CE reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in ABET-approved program or other related college course.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license or registration holder's field of practice.

(5) Self-directed study--Time spent engaging in professional development that is not otherwise identified in this rule. (Examples include, but are not limited to: reading/reviewing trade magazines or books, watching tutorials, and viewing other online content.)

(c) Every license or registration holder is required to obtain 12 PDH units during the renewal period year.

(d) A minimum of 3 PDH units per renewal period must be in the area of professional ethics, roles and responsibilities of professional surveying, or review of the Acts and Board Rules. PDH units carried forward may not be counted to meet the professional ethics requirement.

(e) If a license or registration holder exceeds the annual requirement in any renewal period, a maximum of 9 PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other groups.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other groups.

(5) Teaching or instructing as listed in paragraphs (1) through (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing or registration examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization; and

(C) Serving in other official positions.

(8) U.S. Patents issued.

(9) Engaging in self-directed study.

(10) Active participation in educational outreach activities involving K-12 or higher education students.

(11) A passing score on the Principles and Practice of Surveying examination in accordance with §134.73 of this title (relating to Examination Results and Analysis).

(g) All activities described in subsection (f) of this section shall be relevant to the practice of professional land surveying and may include educational, technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows:

(1) 1 College or unit semester hour--15 PDH.

(2) 1 College or unit quarter hour--10 PDH.

(3) 1 Continuing Education Unit--10 PDH.

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH.

(5) 1 Hour of professional development through self-directed study--1 PDH (Not to exceed 4 PDH).

(6) Each published paper, article, or book--10 PDH.

(7) Active participation in professional or technical society, association, agency, or organization--1 PDH (Not to exceed 5 PDH per organization).

(8) Active participation in educational outreach activities--1 PDH (Not to exceed 3 PDH).

(9) Each U.S. patent issued--15 PDH.

(10) Other activities shall be credited at 1 PDH for each hour of participation in the activity.

(11) A passing score on the Principles and Practice of Surveying examination in accordance with §134.73 of this title - 9 PDH.

(i) Determination of Credit.

(1) The board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The board shall not pre-approve or endorse any CE activities. It is the responsibility of each license or registration holder to assure that all PDH credits claimed meet CE requirements.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed study will be based on one PDH unit for each hour of study and is not to exceed 4 PDH per renewal period. Credit determination for self-directed study is the responsibility of the license or registration holder and subject to review as required by the board.

(6) Credit determination for activities described in subsection (h)(4) of this section is the responsibility of the license or registration holder and subject to review as required by the board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license or registration holder serve as an officer of the organization, actively participate in a committee of the organization, or serve in other official positions. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit is valid for teaching a course or seminar for the first time only.

(j) The license or registration holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) attendance verification records in the form of completion certificates or other documents supporting evidence of attendance.

(k) The license or registration holder must certify that CE requirements have been satisfied for that renewal year with the renewal application and fee.

(l) CE records for each license or registration holder must be maintained for a period of three years by the license holder.

(m) CE records for each license or registration holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the board or its authorized representative for audit verification purposes.

(2) If upon auditing a license or registration holder, the board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of surveying; the board may require the license or registration holder to acquire additional PDH as needed to fulfill the minimum CE requirements.

(n) A license or registration holder may be exempt from the continuing education requirements for one of the following reasons listed in paragraphs (1) - (4) of this subsection:

(1) New license holders shall be exempt for their first renewal period if the Principles and Practice of surveying exam was taken within 1 calendar year of the license or registration issuance date.

(2) A license or registration holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the continuing education hours required during that year.

(3) License or registration holders experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4) License or registration holders who list their status as "Inactive" and who further certify that they are not providing professional surveying services in Texas shall be exempt from the continuing education hours required.

(5) Exemptions must be claimed at the time of renewal.

(o) A license or registration holder may bring an inactive license to active status by obtaining all delinquent PDH units and submitting copies of CE records demonstrating compliance to the board or its authorized representative for verification purposes. If the total number required to become current exceeds 24 units, then 24 units shall be the maximum number required, and hours acquired must be within the two years prior to reactivation.

(p) Noncompliance:

(1) If a license or registration holder does not certify that CE requirements have been met for a renewal period, the license or registration shall be considered expired and subject to late fees and penalties.

(2) Failure to comply with CE reporting requirements as listed in this section is a violation of board rules and shall be subject to sanctions.

(3) A determination by audit that CE requirements have been falsely reported shall be considered to be misconduct and will subject the license or registration holder to disciplinary action.

(4) If found to be noncompliant, the board may require additional audits of the license or registration holder.

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 July 31, 2020.

TRD-202003131
Lance Kinney
Executive Director
Texas Board of Professional Engineers and Land Surveyors
Earliest possible date of adoption: September 13, 2020
For further information, please call: (512) 440-3080

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. HUMAN TRAFFICKING RESOURCE CENTER

26 TAC §370.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §370.1, concerning Human Trafficking Prevention Training Requirements.

BACKGROUND AND PURPOSE

The purpose of the proposal is to establish the review, approval, and update process of the list of human trafficking prevention training courses approved by the Executive Commissioner, pursuant to Texas Occupations Code, §116.002. The proposed rule also defines key terms and the time prescribed for a health care practitioner to successfully complete a training course on human trafficking prevention.

The proposal is necessary to comply with Texas Occupations Code, §§116.001, 116.002, and 116.003, which require HHSC to approve, post, and update a list of human trafficking prevention training courses for certain health care practitioners.

HHSC proposes the new rule as the result of House Bill (H.B.) 2059, 86th Legislature, Regular Session, 2019. H.B. 2059 requires the Executive Commissioner to approve training courses on human trafficking prevention, including at least one that is available without charge. It also requires the Executive Commissioner to post the list of approved training courses on the agency website and to update the list of approved trainings as necessary. The bill requires an HHSC rule to define the time allowed for health care practitioners to successfully complete a training course from the approved list.

SECTION-BY-SECTION SUMMARY

Proposed new §370.1(a) defines terms used in the section.

Proposed new §370.1(b) establishes that a course must meet the human trafficking prevention training standards established by HHSC, in order to be approved by the Executive Commissioner.

Proposed new §370.1(c) lists the categories of minimum standards that must be met for a training course to be approved.

Proposed new §370.1(d) defines the time prescribed for a health care practitioner to complete an approved human trafficking prevention training course. It also confirms that at least one approved course will be available free of charge.

Proposed new §370.1(e) states that the complete description of the human trafficking prevention training standards and approval process is posted on the HHSC website.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does 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 rule will be in effect:

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

(6) the proposed rule will not expand, limit, or repeal existing rules;

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

(8) the proposed rule will not affect 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 apply to small or micro-businesses, or rural communities.

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 for Health, Developmental and Independence Services, has determined that for each year of the first five years the rule is in effect the public benefit will be that health care practitioners who provide direct patient care will be trained in human trafficking prevention efforts, which will increase the number of potential victims of human trafficking identified and treated throughout the state. This will decrease the overall incidence of human trafficking and improve the health and safety of the public.

Trey Wood has also determined that for the first five years the rule is in effect, there could be anticipated economic costs to persons who are required to comply with the proposed rule. The proposed rule requires a completed course for each health care practitioner license renewal, as defined by each licensing entity, and at least one training to be available to practitioners free of charge. There is already a federally-approved course (SOAR) that is free. Practitioners also have the flexibility in choosing a course for completion, including SOAR, and any other free courses for future licensing renewals. HHSC does not have sufficient information to determine which courses health care practitioners will be required to take and potential licensing entity costs to add these requirements. As a result, HHSC does not have sufficient information to estimate costs to comply.

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) 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 20R034" in the subject line.

STATUTORY AUTHORITY

The proposed new section 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 Texas Occupations Code §§116.002, which directs the Executive Commissioner of HHSC to develop and approve required human trafficking training courses.

§370.1. Human Trafficking Prevention Training Requirements.

(a) The following terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) Health care practitioner--An individual who holds a license, certificate, permit, or other authorization, issued under Title 3 of the Texas Occupations Code, to engage in a health care profession and provides direct patient care.

(2) Direct patient care--The act of providing direct delivery of care and services to patients and clients in a health care setting described under Title 3 of the Texas Occupations Code.

(b) For a human trafficking prevention training course to become approved by the Executive Commissioner, or designee, the course must meet the human trafficking training standards established by the Health and Human Services Commission.

(c) The human trafficking prevention training course, at a minimum, must include:

(1) types of human trafficking, including definitions;

(2) vulnerability factors;

(3) health impact;

(4) identification;

(5) assessment;

(6) response; and

(7) resources.

(d) Health care practitioners must complete an approved human trafficking prevention training course for each license renewal, within the full license term as defined by each licensing entity. At least one approved course will be available without charge.

(e) A complete description of the human trafficking prevention training standards and training approval process is posted on the HHSC website.

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 July 31, 2020.

TRD-202003124

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: September 13, 2020
For further information, please call: (512) 776-2460

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE
SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

30 TAC §39.403

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §39.403.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking would streamline the regulation for pre-injection units (PIUs) associated with injection wells by removing redundant requirements for registering or permitting PIUs under 30 TAC Chapter 331. PIUs are above-ground waste management units associated with an injection well and can include equipment and structures such as tanks, surface impoundments, filters, pumps, and piping used for storage and processing of waste prior to injection into an injection well.

The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells is inconsistent with the regulation of the same types of units under the TCEQ solid waste management program. PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells must be authorized by a permit or registration. The same types of units used to store or process industrial nonhazardous, noncommercial waste not disposed in an injection well do not require authorization by a permit or registration. The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are also inconsistent with the United States Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program. The EPA does not regulate nonhazardous PIUs under the UIC Program.

Additionally, PIUs managing waste generated from *in situ* mining of uranium are redundantly regulated under TCEQ's radioactive substance rules. PIUs that store or process waste generated from *in situ* mining of uranium disposed in an injection well must be authorized by an injection well permit. The design, construction, operation and closure of these PIUs is also regulated under the radioactive material license.

Consistent with other commission rules and EPA regulations, the proposed rulemaking would amend and repeal rules for PIUs associated with nonhazardous, noncommercial injection wells to remove the requirements to permit or register PIUs under Chapter 331 and would result in a streamlined UIC permit application process.

Although the permitting and registration requirements for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are proposed to be amended and re-

pealed, the PIUs will still be regulated under either the TCEQ solid waste regulations or the TCEQ radioactive substance regulations. Owners of PIUs used to store or process industrial solid waste must still comply with the notification requirements in 30 TAC §335.6. Owners of PIUs used to store or process waste generated from *in situ* mining of uranium must still comply with the radioactive materials licensing requirements of 30 TAC Chapter 336.

As part of this rulemaking, the commission is also proposing corresponding revisions to 30 TAC Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 331, Underground Injection Control.

Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§39.403, Applicability

The commission proposes to amend §39.403 by deleting §39.403(c)(6) and renumbering the subsequent paragraph accordingly. Because the commission is eliminating the provisions in §331.17 that address the registration of PIUs, the reference in current §39.403(c)(6) to PIU registrations is no longer necessary. This amendment of §39.403 would improve the ease of use of this rule by removing the reference to a type of authorization that will no longer be required in commission rules. No substantive changes to public notice requirements are made by this amendment.

Fiscal Note: Costs to State and Local Government

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

This rulemaking addresses necessary changes in order to eliminate the reference in Chapter 39 to the PIU registrations.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be improved readability and compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the 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 proposed amendment to §39.403 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 a reference to an authorization that will no longer be available so that there is no confusion regarding the applicable rules for public notice for certain permit applications.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendment to §39.403 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).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §39.403 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rule does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed 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 Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* 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 2016-022-331-WS. The comment period closes on September 15, 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 Tamara Young, Underground Injection Control Permits Section, (512) 239-6582.

Statutory Authority

The amendment is proposed 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. Additionally, the amendment is proposed 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, §§5.013, 5.102, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§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); or

[~~(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~~]

(6) [~~(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 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 July 31, 2020.

TRD-202003108
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 13, 2020
For further information, please call: (512) 239-2678

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CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS
SUBCHAPTER F. ACTION BY THE COMMISSION

30 TAC §50.113

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §50.113.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking would streamline the regulation for pre-injection units (PIUs) associated with injection wells by removing redundant requirements for registering or permitting PIUs under 30 TAC Chapter 331. PIUs are above-ground waste management units associated with an injection well and can include equipment and structures such as tanks, surface impoundments, filters, pumps, and piping used for storage and processing of waste prior to injection into an injection well.

The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells is inconsistent with the regulation of the same types of units under the TCEQ solid waste management program. PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells must be authorized by a permit or registration. The same types of units used to store or process industrial nonhazardous, noncommercial waste not disposed in an injection well do not require authorization by a permit or registration. The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are also inconsistent with the United States Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program. The EPA does not regulate nonhazardous PIUs under the UIC Program.

Additionally, PIUs managing waste generated from *in situ* mining of uranium are redundantly regulated under TCEQ's radioactive substance rules. PIUs that store or process waste generated from *in situ* mining of uranium disposed in an injection well must be authorized by an injection well permit. The design, construction, operation and closure of these PIUs are also regulated under the radioactive material license.

Consistent with other commission rules and EPA regulations, the proposed rulemaking would amend and repeal rules for PIUs associated with nonhazardous, noncommercial injection wells to remove the requirements to permit or register PIUs under Chapter 331 and would result in a streamlined UIC permit application process.

Although the permitting and registration requirements for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are proposed to be amended and repealed, the PIUs will still be regulated under either the TCEQ solid waste regulations or the TCEQ radioactive substance regulations. Owners of PIUs used to store or process industrial solid waste must still comply with the notification requirements in 30 TAC §335.6. Owners of PIUs used to store or process waste generated from *in situ* mining of uranium must still comply with the radioactive materials licensing requirements of 30 TAC Chapter 336.

As part of this rulemaking, the commission is also proposing corresponding revisions to 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 331, Underground Injection Control.

Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§50.113, Applicability and Action on Application

The commission proposes to amend §50.113 by deleting §50.113(d)(7) and renumbering subsequent paragraphs accordingly. Because the commission is eliminating the provisions in §331.17 that address the registration of PIUs, the reference in current §50.113(d)(7) to PIU registrations is no longer necessary. This amendment of §50.113 would improve the ease of use of this applicability rule by removing the reference to a type of authorization that will no longer be required in commission rules. No substantive changes to public participation requirements are made by this amendment.

Fiscal Note: Costs to State and Local Government

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

This rulemaking removes the reference in Chapter 50 relating to the registration of PIUs because that reference is no longer necessary.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be improved readability and the removal of inconsistencies with the regulations of PIUs.

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

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the 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 proposed amendment to §50.113 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 a reference to an authorization that will no longer be available so that there is no confusion regarding the applicable rules for commission action on certain permit applications.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt

a rule solely under the general authority of the commission. The proposed amendment to §50.113 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).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment of §50.113 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). The proposed rule does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed 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 Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. 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 2016-022-331-WS. The comment period closes on September 15, 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 Tamara Young, Underground Injection Control Permits Section, (512) 239-6582.

Statutory Authority

The amendment is proposed 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. Additionally, the amendment is proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§50.113. Applicability and Action on Application.

(a) Applicability. This subchapter applies to applications that are declared administratively complete on or after September 1, 1999.

(b) This chapter does not create a right to a contested case hearing where the opportunity for a contested case hearing does not exist under other law.

(c) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn, or have been denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Texas Water Code, Chapters 26 and 27 and Texas Health and Safety Code, Chapters 361 and 382, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(d) Without holding a contested case hearing, the commission may act on:

(1) an application for any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) an application for any initial issuance of an air permit for an electric generating facility;

(3) an application for a hazardous waste permit renewal under §305.631(a)(8) of this title (relating to Renewal);

(4) an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit;

(5) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine

from [~~From~~] Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(6) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.023, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

[~~(7) an application for pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration);~~]

(7) [~~(8)~~] an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018; and

(8) [~~(9)~~] other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by 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.

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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) proposes amendments to §55.101 and §55.201.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking would streamline the regulation for pre-injection units (PIUs) associated with injection wells by removing redundant requirements for registering or permitting PIUs under 30 TAC Chapter 331. PIUs are above-ground waste management units associated with an injection well and can include equipment and structures such as tanks, surface impoundments, filters, pumps, and piping used for storage and processing of waste prior to injection into an injection well.

The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells is inconsistent with the regulation of the same types of units under the TCEQ solid waste management program. PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells must be authorized by a permit or registration. The same types of units used to store or process industrial nonhazardous, noncommercial waste not disposed in an injection well do not require authorization by a permit or registration. The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are also inconsistent with the United States Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program. The EPA does not regulate nonhazardous PIUs under the UIC Program.

Additionally, PIUs managing waste generated from *in situ* mining of uranium are redundantly regulated under TCEQ's radioactive substance rules. PIUs that store or process waste generated from *in situ* mining of uranium disposed in an injection well must be authorized by an injection well permit. The design, construction, operation and closure of these PIUs is also regulated under the radioactive material license.

Consistent with other commission rules and EPA regulations, the proposed rulemaking would amend and repeal rules for PIUs associated with nonhazardous, noncommercial injection wells to remove the requirements to permit or register PIUs under Chapter 331 and would result in a streamlined UIC permit application process.

Although the permitting and registration requirements for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are proposed to be amended and repealed, the PIUs will still be regulated under either the TCEQ solid waste regulations or the TCEQ radioactive substance regulations. Owners of PIUs used to store or process industrial solid waste must still comply with the notification requirements in 30 TAC §335.6. Owners of PIUs used to store or process waste generated from *in situ* mining of uranium must still comply with the radioactive materials licensing requirements of 30 TAC Chapter 336.

As part of this rulemaking, the commission is also proposing corresponding revisions to 30 TAC Chapter 39, Public Notice; Chapter 50, Action on Applications and Other Authorizations; and Chapter 331, Underground Injection Control.

Section by Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§55.101, Applicability

The commission proposes to amend §55.101 by deleting §55.101(g)(11) and renumbering subsequent paragraphs accordingly. Because the commission is eliminating the provisions in §331.17 that address the registration of PIUs, the reference in current §55.101(g)(11) to PIU registrations is no longer necessary. This amendment of §55.101 would improve the ease of use of this applicability rule by removing the reference to a type of authorization that will no longer be required in commission rules. No substantive changes to public participations requirements are made by this amendment.

§55.201, Requests for Reconsideration or Contested Case Hearing

The commission proposes to amend §55.201 by deleting §55.201(i)(8) and renumbering subsequent paragraphs accordingly. Because the commission is eliminating the provisions in §331.17 that address the registration of PIUs, the reference in current §55.201(i)(8) to PIU registrations is no longer necessary. This amendment of §55.201 would improve the ease of use of this rule which identifies types of commission authorization that are not subject to a right to a contested case hearing by

removing the reference to PIU registrations that will no longer be required in commission rules. No substantive changes to public notice requirements are made by this rulemaking.

Fiscal Note: Costs to State and Local Government

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

This rulemaking removes provisions in Chapter 55 that reference the registration of PIUs because the references are no longer necessary.

Public Benefits and Costs

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

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

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis 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 proposed amendments to §55.101 and §55.201 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 removes references to an authorization that will no longer be available so that there is no confusion regarding the applicable rules for public participation for certain permit applications.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments to §55.101 and §55.201 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).

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments of §55.101 and §55.201 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 proposed rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found 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 rulemaking 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 Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* 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 2016-022-331-WS. The comment period closes on September 15, 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 Tamara Young, Underground Injection Control Permits Section, (512) 239-6582.

SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.101

Statutory Authority

The amendment is proposed 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. Additionally, the amendment is proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§55.101. Applicability.

(a) This subchapter and Subchapters E - G of this chapter (relating to Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section.

(b) This subchapter and Subchapters E - G of this chapter apply to public comments, public meetings, hearing requests, and requests for reconsideration.

(c) This subchapter and Subchapters E and F of this chapter apply only to applications filed under Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section and other than those filed under TWC, Chapters 26, 27, and 32 and THSC, Chapters 361 and 382.

(e) This subchapter and Subchapters E and F of this chapter apply to applications for amendment, modification, or renewal of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may not seek further public comment or hold a public hearing under the procedures provided by §39.419 of this title (relating to Notice of Application and Preliminary Decision), §55.156 of this title (relating to Public Comment Processing), and Subchapter F of this chapter for such applications. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(f) This subchapter and Subchapters E - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule) except for construction of concrete batch plants which are not temporarily located contiguous or adjacent to a public works project;

(4) applications for Class I injection well permits used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under TWC, §27.021, concerning Permit for Disposal of Brine <u>from</u> [~~From~~] Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(5) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under TWC, §27.025, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals; and

(6) applications where the opportunity for a contested case hearing does not exist under other laws.

(g) This subchapter and Subchapters E - G of this chapter do not apply to:

(1) applications for sludge registrations and notifications under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(2) applications for authorization 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 (relating to Concentrated Animal Feeding Operations);

(3) applications for registrations under Chapter 330 of this title (relating to Municipal Solid Waste);

(4) applications for registrations and notifications under Chapter 332 of this title (relating to Composting);

(5) applications under TWC, §11.036 or §11.041. The maximum expected duration of a hearing on an application referred to the State Office of Administrative Hearings (SOAH) under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a SOAH hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(7) applications for initial issuance of voluntary emissions reduction permits under THSC, §382.0519;

(8) applications for initial issuance of permits for electric generating facility permits under Texas Utilities Code, §39.264;

(9) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(10) applications for multiple plant permits under THSC, §382.05194; and

[(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-Injection Units Registration); and]

(11) [(12)] applications where the opportunity for a contested case hearing does not exist under other laws.

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

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SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

Statutory Authority

The amendment is proposed 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. Additionally, the amendment is proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) A request for reconsideration or contested case hearing must be filed no later than 30 days after the chief clerk mails (or otherwise transmits) the executive director's decision and response to comments and provides instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided by subsection (a) of this section, may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment, and, for applications filed on or after September 1, 2015, must be based only on the requestor's timely comments.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) for applications filed:

(A) before September 1, 2015, list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; or

(B) on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and

(5) provide any other information specified in the public notice of application.

(e) Any person, other than a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title (relating to Definitions), may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk before the public comment deadline that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file.

(2) The commission may extend the time allowed to file a request for reconsideration, or a request for a contested case hearing.

(h) Any person, except the applicant, the executive director, the public interest counsel, and a state agency that is prohibited by law from contesting the issuance of a permit or license as set forth in §55.103 of this title, who was provided notice as required under Chapter 39 of this title (relating to Public Notice) but who failed to file timely public comment, failed to file a timely hearing request, failed to participate in the public meeting held under §55.154 of this title (relating to Public Meetings), and failed to participate in the contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing), or §80.272 of this title (relating to Motion for Rehearing) or may file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a contested case hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title;

(3) any air permit application for the following:

(A) initial issuance of an electric generating facility permit;

(B) permits issued under Chapter 122 of this title (relating to Federal Operating Permits Program);

(C) a permit issued under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions); or

(D) amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.65(8) of this title (relating to Renewal);

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment has been given; and

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit;

(6) an application for a Class I injection well permit used only for the disposal of nonhazardous brine produced by a desalination operation or nonhazardous drinking water treatment residuals under Texas Water Code, §27.021, concerning Permit for Disposal of Brine from Desalination Operations or of Drinking Water Treatment Residuals in Class I Injection Wells;

(7) the issuance, amendment, renewal, suspension, revocation, or cancellation of a general permit, or the authorization for the use of an injection well under a general permit under Texas Water Code, §27.025, concerning General Permit Authorizing Use of Class I Injection Well to Inject Nonhazardous Brine from Desalination Operations or Nonhazardous Drinking Water Treatment Residuals;

~~[(8) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-injection Units Registration);]~~

(8) [~~(9)~~] an application for a permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), if the application was submitted on or before January 1, 2018;

(9) [~~(10)~~] other types of applications where a contested case hearing request has been filed, but no opportunity for hearing is provided by law; and

(10) [~~(11)~~] an application for a production area authorization, except as provided in accordance with §331.108 of this title (relating to Opportunity for a Contested Case Hearing on a Production Area Authorization Application).

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

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Robert Martinez
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CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§331.2, 331.5, 331.7, 331.47, 331.64, and 331.121, and the repeal of §331.17 and §331.18.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking would streamline the regulation for pre-injection units (PIUs) associated with injection wells by removing redundant requirements for registering or permitting PIUs under 30 TAC Chapter 331. PIUs are above-ground waste management units associated with an injection well and can include equipment and structures such as tanks, surface impoundments, filters, pumps, and piping used for storage and processing of waste prior to injection into an injection well.

The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells is inconsistent with the regulation of the same types of units under the TCEQ solid waste management program. PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells must be authorized by a permit or registration. The same types of units used to store or process industrial nonhazardous, noncommercial waste not disposed in an injection well do not require authorization by a permit or registration. The regulation of PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are also inconsistent with the United States Environmental Protection Agency's (EPA) Underground Injection Control (UIC) Program. The EPA does not regulate nonhazardous PIUs under the UIC Program.

Additionally, PIUs managing waste generated from *in situ* mining of uranium are redundantly regulated under TCEQ's radioactive substance rules. PIUs that store or process waste generated from *in situ* mining of uranium disposed in an injection well must be authorized by an injection well permit. The design, construction, operation and closure of these PIUs is also regulated under the radioactive material license.

Consistent with other commission rules and EPA regulations, the proposed rulemaking would amend and repeal rules for PIUs associated with nonhazardous, noncommercial injection wells to remove the requirements to permit or register PIUs under Chapter 331 and would result in a streamlined UIC permit application process.

Although the permitting and registration requirements for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells are proposed to be amended and repealed, the PIUs will still be regulated under either the TCEQ solid waste regulations or the TCEQ radioactive substance regulations. Owners of PIUs used to store or process industrial solid waste must still comply with the notification requirements in 30 TAC §335.6. Owners of PIUs used to store or process waste generated from *in situ* mining of uranium must still comply with the radioactive materials licensing requirements of 30 TAC Chapter 336, Radioactive Substance Rules.

As part of this rulemaking, the commission is also proposing corresponding revisions to 30 TAC Chapter 39, Public Notice; Chapter 50, Action on Applications and Other Authorizations; and Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment.

Section by Section Discussion

The commission proposes various stylistic, non-substantive changes, such as grammatical corrections or cross-references. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§331.2, Definitions

The commission proposes to amend §331.2(2)(D) to remove the text "pre-injection units for processing or storage of waste" from the definition of "Activity" and re-letter the subsequent subparagraph accordingly. Section 331.7(a) requires all injection wells and activities to be authorized by an individual permit. This proposed amendment removes PIUs from the definition of "Activity", thus removing PIUs from the requirement to be authorized by an individual permit.

§331.5, Prevention of Pollution

The commission proposes to amend §331.5(c) to remove the text "which are required to be authorized by permit or registration under §331.7(d) of this title (relating to Permit Required)." This proposed amendment removes the text referencing the requirement for PIUs to be authorized by permit or registration. The proposed amendment does not remove the requirement for PIUs to be designed, constructed, operated, maintained, monitored, and closed in a manner that prevents pollution.

§331.7, Permit Required

The commission proposes to amend §331.7(a) to correct a cross-reference as a result of the proposed removal of §331.7(d).

The commission proposes to amend §331.7 by removing subsection (d) and re-lettering subsequent subsections accordingly. This proposed amendment removes the requirement for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells to be authorized by a permit or registration.

§331.17, Pre-injection Units Registration

The commission proposes to repeal §331.17. This proposed repeal removes the approval guidelines, registration procedures, and design criteria for registration of PIUs associated with Class I and Class V nonhazardous, noncommercial injection wells.

§331.18, Registration Application, Processing, Notice, Comment, Motion to Overturn

The commission proposes to repeal §331.18. This proposed repeal removes the application requirements, processing requirements, notice requirements, major and minor amendment requirements, and public comment and motion to overturn requirements for registration of PIUs associated with Class I and Class V nonhazardous, noncommercial injection wells.

§331.47, Pond Lining

The commission proposes to amend §331.47(a) to remove the text "Except as provided in subsection (b) of this section, all", and "as approved by the executive director or as required by permits." The proposed rulemaking amends §331.47(a) by removing the reference to subsection (b). This proposed amendment also removes the reference to executive director approval or permitting of the liner for ponds and surface impoundments. This proposed amendment does not remove the requirement for ponds or surface impoundments to be lined with clay or an artificial liner.

The commission proposes to amend §331.47 by removing subsection (b). This proposed amendment removes the requirement for surface impoundments managing nonhazardous, noncommercial Class 1 industrial waste associated with Class I and Class V nonhazardous, noncommercial injection wells to meet the design standards in 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems. The design standards for domestic wastewater systems are not applicable to surface impoundments managing nonhazardous, noncommercial Class 1 industrial waste and are not consistent with the standards for surface impoundments and ponds in Chapter 331 and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

§331.64, Monitoring and Testing Requirements

The commission proposes to amend §331.64(g)(1) and (3) to update incorrect cross-references.

§331.121, Class I Wells

The commission proposes to amend §331.121(a)(2) to update a cross-reference as a result of the proposed removal of §331.121(a)(2)(R).

The commission proposes to amend §331.121(a)(2)(K) to remove the text "and Pre-injection units, except that pre-injection units registered under the provisions of §331.17 of this title (relating to Pre-injection Units Registration) shall be considered under that section." This proposed amendment removes the requirement for the commission to consider the engineering drawings of PIUs before issuing a Class I injection well permit.

The commission proposes to amend §331.121(a)(2)(Q) to remove the text "under this chapter." This proposed amendment removes the reference to PIU authorizations under Chapter 331. PIUs are regulated under Chapter 335 and Chapter 336.

The commission proposes to amend §331.121 by removing subsection (a)(2)(R). This proposed amendment removes the requirement for the commission to consider information demonstrating PIU compliance with the design criteria in Chapter 217.

Fiscal Note: Costs to State and Local Government

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

This rulemaking proposes to amend and repeal permitting and registration regulations for PIUs associated with nonhazardous, noncommercial Class I and Class V injection wells, eliminate the inconsistencies with the TCEQ solid waste program requirements, remove the redundancies with the TCEQ radioactive substance requirements, and result in a streamlined UIC permit application process.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved readability, and the removal of inconsistencies and duplicate regulations for PIUs.

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

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking 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 proposed rulemaking removes registration requirements for PIUs and are 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. Existing requirements for the management of solid waste in Chapter 335 or management of by-product material in Chapter 336 are not changed by this rulemaking.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed rules do not exceed an express requirement of state law or a requirement of a delegation agreement as there are no express requirements for the registration of PIUs. These rules 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 proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

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

Consistency with the Coastal Management Program

The commission reviewed the proposed 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 rulemaking 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 Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* 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 2016-022-331-WS. The comment period closes on September 15, 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 Tamara Young, Underground Injection Control Permits Section, (512) 239-6582.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§331.2, 331.5, 331.7

Statutory Authority

The amendments are proposed 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, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendments are proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) Abandoned well--A well which has been permanently discontinued from use or a well for which, after appropriate review and evaluation by the commission, there is no reasonable expectation of a return to service.

(2) Activity--The construction or operation of any of the following:

(A) an injection well for disposal of waste;

(B) an injection or production well for the recovery of minerals;

(C) a monitor well at a Class III injection well site; or

[~~(D) pre-injection units for processing or storage of waste; or~~]

(D) [~~(E)~~] any other class of injection well regulated by the commission.

(3) Affected person--Any person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the proposed injection operation for which a permit is sought.

(4) Annulus--The space in the wellbore between the injection tubing and the long string casing and/or liner.

(5) Annulus pressure differential--The difference between the annulus pressure and the injection pressure in an injection well.

(6) Aquifer--A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(7) Aquifer recharge project--A project involving the intentional recharge of an aquifer by means of an injection well authorized under this chapter or other means of infiltration, including actions designed to:

(A) reduce declines in the water level of the aquifer;

(B) supplement the quantity of groundwater available;

(C) improve water quality in an aquifer;

(D) improve spring flows and other interactions between groundwater and surface water; or

(E) mitigate subsidence.

(8) Aquifer restoration--The process used to achieve or exceed water quality levels established by the commission for a permit/production area.

(9) Aquifer storage and recovery--The injection of water into a geologic formation, group of formations, or part of a formation that is capable of underground storage of water for later retrieval and beneficial use.

(10) Aquifer storage and recovery injection well--A Class V injection well used for the injection of water into a geologic formation as part of an aquifer storage and recovery project.

(11) Aquifer storage and recovery production well--A well used for the production of water from a geologic formation as part of an aquifer storage and recovery project.

(12) Aquifer storage and recovery project--A project involving the injection of water into a geologic formation for the purpose of subsequent recovery and beneficial use by the project operator.

(13) Area of review--The area surrounding an injection well described according to the criteria set forth in §331.42 of this title (relating to Area of Review) or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 mile or a number calculated according to the criteria set forth in §331.42 of this title.

(14) Area permit--A permit that authorizes the construction and operation of two or more similar injection, production, or monitoring wells used in operations associated with Class III well activities within a specified area.

(15) Artificial liner--The impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene, elasticized polyolefin, polyvinyl chloride (PVC), other manmade materials, or similar materials.

(16) Baseline quality--The parameters and their concentrations that describe the local groundwater quality of an aquifer prior to the beginning of injection operations.

(17) Baseline well--A well from which groundwater is analyzed to define baseline quality in the permit area (regional baseline well) or in the production area (production area baseline well).

(18) Bedded salt--A geologic formation, group of formations, or part of a formation consisting of non-domal salt that is layered and may be interspersed with non-salt sedimentary materials such as anhydrite, shale, dolomite, and limestone. The salt layers themselves often contain significant impurities.

(19) Bedded salt cavern disposal well--A well or group of wells and connecting storage cavities which have been created by solution mining, dissolving or excavation of salt bearing deposits or other geological formations and subsequently developed for the purpose of disposal of nonhazardous drinking water treatment residuals.

(20) Blanket material or blanket pad--A fluid placed within a salt cavern that is lighter than the water in the cavern and will not dissolve the salt or any mineral impurities that may be contained within the salt. The function of the blanket is to prevent unwanted leaching of the salt cavern roof, prevent leaching of salt from around the cemented casing, and to protect the cemented casing from internal corrosion. Blanket material typically consists of crude oil, mineral oil, or some fluid possessing similar noncorrosive, nonsoluble, low density properties. The blanket material is placed between the salt cavern's outermost hanging string and innermost cemented casing.

(21) Buffer area--The area between any mine area boundary and the permit area boundary.

(22) Caprock--A geologic formation typically overlying the crest and sides of a salt stock. The caprock consists of a complex assemblage of minerals including calcite ($CaCO_3$), anhydrite ($CaSO_4$), and accessory minerals. Caprocks often contain lost circulation zones characterized by rock layers of high porosity and permeability.

(23) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(24) Casing--Material lining used to seal off strata at and below the earth's surface.

(25) Cement--A substance generally introduced as a slurry into a wellbore which sets up and hardens between the casing and borehole and/or between casing strings to prevent movement of fluids within or adjacent to a borehole, or a similar substance used in plugging a well.

(26) Cementing--The operation whereby cement is introduced into a wellbore and/or forced behind the casing.

(27) Cesspool--A drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

(28) Commercial facility--A Class I permitted facility, where one or more commercial wells are operated.

(29) Commercial underground injection control (UIC) Class I well facility--Any waste management facility that accepts,

for a charge, hazardous or nonhazardous industrial solid waste for disposal in a UIC Class I injection well, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(30) Commercial well--An underground injection control Class I injection well which disposes of hazardous or nonhazardous industrial solid wastes, for a charge, except for a captured facility or a facility that accepts waste only from facilities owned or effectively controlled by the same person.

(31) Conductor casing or conductor pipe--A short string of large-diameter casing used to keep the top of the wellbore open during drilling operations.

(32) Cone of influence--The potentiometric surface area around the injection well within which increased injection zone pressures caused by injection of wastes would be sufficient to drive fluids into an underground source of drinking water or freshwater aquifer.

(33) Confining zone--A part of a formation, a formation, or group of formations between the injection zone and the lowermost underground source of drinking water or freshwater aquifer that acts as a barrier to the movement of fluids out of the injection zone.

(34) Contaminant--Any physical, biological, chemical, or radiological substance or matter in water.

(35) Control parameter--Any physical parameter or chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well. Monitoring includes measurement with field instrumentation or sample collection and laboratory analysis.

(36) Desalination brine--The waste stream produced by a desalination operation containing concentrated salt water, other naturally occurring impurities, and additives used in the operation and maintenance of a desalination operation.

(37) Desalination concentrate--Same as desalination brine.

(38) Desalination operation--A process which produces water of usable quality by desalination.

(39) Disposal well--A well that is used for the disposal of waste into a subsurface stratum.

(40) Disturbed salt zone--Zone of salt enveloping a salt dome cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt dome cavern, and is the result of mining activities during salt dome cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(41) Drilling mud--A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(42) Drinking water treatment residuals--Materials generated, concentrated or produced as a result of treating water for human consumption.

(43) Drywell--A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(44) Enhanced oil recovery project (EOR)--The use of any process for the displacement of oil from the reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process. This term does not include pressure maintenance or water disposal projects.

(45) Excursion--The movement of mining solutions, as determined by analysis for control parameters, into a designated monitor well.

(46) Existing injection well--A Class I well which was authorized by an approved state or United States Environmental Protection Agency-administered program before August 25, 1988, or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(47) Fluid--Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(48) Formation--A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(49) Formation fluid--Fluid present in a formation under natural conditions.

(50) Fresh water--Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this chapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

(i) it is used as drinking water for human consumption; or

(ii) the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

(iii) it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L total dissolved solids can be put to a beneficial use.

(51) General permit--A permit issued under the provisions of this chapter authorizing the disposal of nonhazardous desalination concentrate and nonhazardous drinking water treatment residuals as provided by Texas Water Code, §27.025.

(52) Groundwater--Water below the land surface in a zone of saturation.

(53) Groundwater protection area--A geographic area (delineated by the state under federal Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(54) Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(55) Improved sinkhole--A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(56) Individual permit--A permit, as defined in the Texas Water Code (TWC), §27.011 and §27.021, issued by the commission or the executive director to a specific person or persons in accordance with the procedures prescribed in the TWC, Chapter 27 (other than TWC, §27.025).

(57) Injection interval--That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(58) Injection operations--The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(59) Injection well--A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(60) Injection zone--A formation, a group of formations, or part of a formation that receives fluid through a well.

(61) In service--The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(62) Intermediate casing--A string of casing with diameter intermediate between that of the surface casing and that of the smaller long-string or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long-string or production casing.

(63) Large capacity cesspool--A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(64) Large capacity septic system--A septic system that is designed for a flow of greater than 5,000 gallons per day.

(65) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(66) Liner--An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(67) Long string casing or production casing--A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(68) Lost circulation zone--A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(69) Mine area--The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(70) Mine plan--A plan for operations at a mine, consisting of:

(A) a map of the permit area identifying the location and extent of existing and proposed production areas; and

(B) an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(71) Monitor well--Any well used for the sampling or measurement with field instrumentation of any chemical or physical property of subsurface strata or their contained fluids. The term "monitor well" shall have the same meaning as the term "monitoring well" as defined in Texas Water Code, §27.002.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling or measurement with field instrumentation is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units.

(72) Motor vehicle waste disposal well--A well used for the disposal of fluids from vehicular repair or maintenance activities including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(73) Native groundwater--Groundwater naturally occurring in a geologic formation.

(74) New injection well--Any well, or group of wells, not an existing injection well.

(75) New waste stream--A waste stream not permitted.

(76) Non-commercial facility--A Class I permitted facility which operates only non-commercial wells.

(77) Non-commercial underground injection control (UIC) Class I well facility--A UIC Class I permitted facility where only non-commercial wells are operated.

(78) Non-commercial well--An underground injection control Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(79) Notice of change (NOC)--A written submittal to the executive director from a permittee authorized under a general permit providing changes to information previously provided to the agency, or any changes with respect to the nature or operations of the facility, or the characteristics of the waste to be injected.

(80) Notice of intent (NOI)--A written submittal to the executive director requesting coverage under the terms of a general permit.

(81) Off-site--Property which cannot be characterized as on-site.

(82) On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(83) Out of service--The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(84) Permit area--The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

(85) Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(86) Point of injection--For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(87) Pollution--The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

(i) to humans, animal life, vegetation, or property; or

(ii) to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(88) Pre-injection units--The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(89) Production area--The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(90) Production area authorization--An authorization, issued under the terms of a Class III injection well area permit, approving the initiation of mining activities in a specified production area within a permit area, and setting specific conditions for production and restoration in each production area within an area permit.

(91) Production well--A well used to recover uranium through *in situ* [~~in situ~~] solution recovery, including an injection well used to recover uranium. The term does not include a well used to inject waste.

(92) Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(93) Project operator--A person holding an authorization by rule, individual permit, or general permit to undertake an aquifer storage and recovery project or an aquifer recharge project.

(94) Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances as defined in §290.38 of this title (relating to Definitions).

(95) Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2, and as amended.

(96) Recharge injection well--A Class V injection well used for the injection of water into a geologic formation for an aquifer recharge project, including an improved sinkhole or cave connected to an aquifer.

(97) Registered Well--A well registered in accordance with the requirements of §331.221 of this title (relating to Registration of Wells).

(98) Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(99) Restored aquifer--An aquifer whose local groundwater quality, within a production area, has, by natural or artificial processes, returned to the restoration table values established in accordance with the requirements of §331.107 of this title (relating to Restoration).

(100) Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt formation, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(101) Salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the Railroad Commission of Texas, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject nonhazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(102) Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(103) Salt dome cavern confining zone--A zone between the salt dome cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt dome cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt dome cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt dome cavern or its disturbed salt zone.

(104) Salt dome cavern injection interval--That part of a salt dome cavern injection zone consisting of the void space of the salt dome cavern into which waste is stored or disposed of, or which is capable of receiving waste for storage or disposal.

(105) Salt dome cavern injection zone--The void space of a salt dome cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt dome cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(106) Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(107) Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(108) Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(109) Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(110) Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. This definition includes subsurface area drip dispersal systems as defined in §222.5 of this title (relating to Definitions).

(111) Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(112) Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into

the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(113) Total dissolved solids--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(114) Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(115) Underground injection--The subsurface emplacement of fluids through a well.

(116) Underground injection control--The program under the federal Safe Drinking Water Act, 42 United States Code, Part C, including the approved Texas state program.

(117) Underground source of drinking water--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than 10,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(118) Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(119) Verifying analysis--A second sampling and analysis or measurement with instrumentation of control parameters for the purpose of confirming a routine sample analysis or measurement which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(120) Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(121) Well injection--The subsurface emplacement of fluids through a well.

(122) Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(123) Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the injection interval, thus making it possible for fluid to move more readily into the formation including, but not limited to, surging, jetting, and acidizing.

(124) Workover--An operation in which a down-hole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

§331.5. Prevention of Pollution.

(a) No permit or authorization by rule shall be allowed where an injection well causes or allows the movement of fluid that would result in the pollution of an underground source of drinking water. A permit or authorization by rule shall include terms and conditions reasonably necessary to protect fresh water from pollution.

(b) Persons authorized to conduct underground injection activities under this chapter shall address unauthorized discharges of chemicals of concern (COCs) from associated tankage and equipment according to the requirements of Chapter 350 of this title (relating to the Texas Risk Reduction Program).

(c) Pre-injection units [~~which are required to be authorized by permit or registration under §331.7(d) of this title (relating to Permit Required),~~] must be designed, constructed, operated, maintained, monitored, and closed so as not to cause:

(1) the discharge or imminent threat of discharge of waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the commission;

(2) the creation or maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

§331.7. Permit Required.

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule) and by subsections (d) and (e) [~~(d) - (f)~~] of this section, all injection wells and activities must be authorized by an individual permit.

(b) For Class III *in situ* [~~in situ~~] uranium solution mining wells, Frasch sulfur wells, and other Class III operations under commission jurisdiction, an area permit authorizing more than one well may be issued for a defined permit area in which wells of similar design and operation are proposed. The wells must be operated by a single owner or operator. Before commencing operation of those wells, the permittee may be required to obtain a production area authorization for separate production or mining areas within the permit area.

(c) The owner or operator of a large capacity septic system, a septic system which accepts industrial waste, or a subsurface area drip dispersal system, as defined in §222.5 of this title (relating to Definitions) must obtain a wastewater discharge permit in accordance with Texas Water Code, Chapter 26 or Chapters 26 and 32, and Chapter 305 of this title (relating to Consolidated Permits), and must submit the inventory information required under §331.10 of this title (relating to Inventory of Wells Authorized by Rule).

[~~(d) Pre-injection units for Class I nonhazardous, noncommercial injection wells and Class V injection wells permitted for the disposal of nonhazardous waste must be either authorized by a permit issued by the commission or registered in accordance with §331.17 of this title (relating to Pre-Injection Units Registration). The option of registration provided by this subsection shall not apply to pre-injection units for Class I injection wells used for the disposal of byproduct material, as that term is defined in Chapter 336 of this title (relating to Radioactive Substance Rules). Pre-injection units for Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals are not subject to authorization by registration but are subject to authorization by an individual permit or under the general permit issued under Subchapter L of this chapter (relating to General Permit Authorizing Use of a Class I Injection Well to Inject Nonhazardous Desalination Concentrate or Nonhazardous Drinking Water Treatment Residuals).~~]

(d) [~~(e)~~] The commission may issue a general permit under Subchapter L of this chapter. The commission may determine that an injection well and the injection activities are more appropriately reg-

ulated under an individual permit than under a general permit based on findings that the general permit will not protect ground and surface fresh water from pollution due to site-specific conditions.

(e) [(f)] Regardless of subsection (a) of this section, an injection well authorized by the Railroad Commission of Texas to use nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals as an injection fluid for enhanced recovery purposes does not require a permit from the commission. The use or disposal of radioactive material under this subsection is subject to the applicable requirements of Chapter 336 of this title.

(f) [(g)] Permits issued before September 1, 2007 for Class III wells for uranium mining will expire on September 1, 2012 unless the permit holder submits an application for permit renewal under §305.65 of this title (relating to Renewal) before September 1, 2012. Any holders of permits for Class III wells for uranium mining issued before September 1, 2007 who allow those permits to expire by not submitting a permit renewal application by September 1, 2012 are not relieved from the obligations under the expired permit or applicable rules, including obligations to restore groundwater and to plug and abandon wells in accordance with the requirements of the permit and applicable rules.

(g) [(h)] Class V injection wells associated with an aquifer storage and recovery (ASR) project or an aquifer recharge project may be authorized by individual permit, general permit, or by rule. The executive director will notify a groundwater conservation district of an ASR project proposed to be authorized by rule that is located within the jurisdictional boundary of that groundwater conservation district.

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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30 TAC §331.17, §331.18

Statutory Authority

The repeals are proposed 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, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the repeals are proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§331.17. Pre-injection Units Registration.
§331.18. Registration Application, Processing, Notice, Comment, Motion to Overturn.

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SUBCHAPTER C. GENERAL STANDARDS AND METHODS

30 TAC §331.47

Statutory Authority

The amendment is proposed 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, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendment is proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§331.47. Pond Lining.

[(a)] All [Except as provided in subsection (b) of this section, all] holding ponds, emergency overflow ponds, emergency storage ponds, or other surface impoundments associated with, or part of the pre-injection units associated with underground injection wells shall be lined with clay or an artificial liner [as approved by the executive director or as required by permit], and shall in addition, conform to any applicable requirements of Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

[(b) All surface impoundments for nonhazardous, noncommercial Class 1 industrial waste associated with Class I nonhazardous, noncommercial injection wells, or Class V injection wells permitted for the disposal of nonhazardous waste, shall meet the design standards contained in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems) which apply to surface impoundments.]

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SUBCHAPTER D. STANDARDS FOR CLASS I WELLS OTHER THAN SALT CAVERN SOLID WASTE DISPOSAL WELLS

30 TAC §331.64

Statutory Authority

The amendment is proposed 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, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendment is proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§331.64. Monitoring and Testing Requirements.

(a) Applicability. Subsections (b) - (j) of this section apply to all Class I wells except for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals.

(b) Injection fluids shall be sampled and analyzed with a frequency sufficient to yield representative data of their characteristics.

(1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(A) the parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(B) the test methods that will be used to test for these parameters; and

(C) the sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the executive director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(c) Pressure gauges shall be installed and maintained, at the wellhead, in proper operating conditions at all times on the injection tubing and on the annulus between the tubing and long-string casing, and/or annulus between the tubing and liner.

(d) Continuous recording devices shall be installed, used, and maintained in proper operating condition at all times to record injection tubing pressures, injection flow rates, injection fluid temperatures, injection volumes, tubing-long string casing annulus pressure and volume, and any other data specified by the permit. The instruments shall be housed in weatherproof enclosures. The owner or operator shall also install and use:

(1) automatic alarm and automatic shutoff systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the executive director exceed a range and/or gradient specified in the permit; or

(2) automatic alarms designed to sound when the pressures and flow rates or other parameters approved by the executive director exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on location and able to immediately respond to alarms at all times when the well is operating.

(3) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate as expeditiously as possible the cause of the alarm or shutoff. If, upon investigation, the well appears to be lacking mechanical integrity, or if monitoring otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(A) cease injection of waste fluids unless authorized by the executive director to continue or resume injection;

(B) take all necessary steps to determine the presence or absence of a leak; and

(C) notify the executive director within 24 hours after the alarm or shutdown.

(4) If the loss of mechanical integrity is discovered by monitoring or during periodic mechanical integrity testing, the owner or operator shall:

(A) immediately cease injection of waste fluids;

(B) take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(C) notify the executive director within 24 hours after the loss of mechanical integrity is discovered;

(D) notify the executive director when injection can be expected to resume; and

(E) restore and demonstrate mechanical integrity to the satisfaction of the executive director prior to resuming injection of waste fluids.

(5) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(A) the owner or operator shall immediately cease injection of waste fluids; and

(i) notify the executive director within 24 hours of obtaining such evidence;

(ii) take all necessary steps to identify and characterize the extent of any release;

(iii) propose a remediation plan for executive director review and approval;

(iv) comply with any remediation plan specified by the executive director;

(v) implement any remediation plan approved by the executive director; and

(vi) where such release is into an underground source of drinking water (USDW) [~~a USDW~~] or freshwater aquifer currently serving as a water supply, within 24 hours, notify the local health authority, place a notice in a newspaper of general circulation, and send notification by mail to adjacent landowners;

(B) the executive director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs or freshwater aquifers.

(e) Mechanical integrity testing.

(1) The integrity of the long string casing, injection tube, and annular seal shall be tested annually by means of an approved pressure test with a liquid or gas and whenever there has been a well workover. The integrity of the bottom-hole cement shall be tested annually by means of an approved radioactive tracer survey. A radioactive tracer survey may be required after workovers that have the potential to damage the cement within the injection zone.

(2) A temperature log, noise log, oxygen activation log, or other approved log shall be required by the executive director at least once every five years to test for fluid movement along the borehole.

(3) A casing inspection, casing evaluation, or other approved log shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the executive director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years. The executive director may require that a casing inspection log be run every five years, if there is sufficient reason to believe the integrity of the long string casing of the well may be adversely affected by naturally occurring or man-made events.

(4) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraph (1) of this subsection with the written approval of the administrator of the United States Environmental Protection Agency (EPA) or his authorized representative. To obtain approval, the executive director shall submit a written request to the EPA administrator, which shall set forth the proposed test and all technical data supporting its use. The EPA administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the EPA administrator shall be published in the *Federal Register* and may be used unless its use is restricted at the time of approval by the EPA administrator.

(f) Any wells within the area of review selected for the observation of water quality, formation pressure, or any other parameter, shall be monitored at a frequency sufficient to protect USDWs [~~underground sources of drinking water (USDWs)~~] and fresh or surface water.

(g) Corrosion monitoring.

(1) Corrosion monitoring of well materials shall be conducted quarterly. Test materials shall be the same as those used in the injection tubing, packer, and long string casing, and shall be continuously exposed to the waste fluids with the exception of when the well is taken out of service. The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and to submit to the executive director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under §331.62(a)(1) [~~§331.62(1)~~] of this title (relating to Construction Standards). Testing shall be by:

(A) placing coupons of the well construction materials in contact with the waste stream; or

(B) routing the waste stream through a loop constructed with the material used in the well; or

(C) using an alternative method approved by the executive director.

(2) The test shall use materials identical to those used in the construction of the well, and those materials must be continuously exposed to the operating pressures and temperatures (measured at the wellhead) and flow rates of the injection operation; and

(3) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in §331.62(a)(1) [~~§331.62(1)~~] of this title.

(4) Corrosion monitoring may be waived by the executive director if the injection well owner or operator satisfactorily demonstrates, before authorization to conduct injection operations, that the waste streams will not be corrosive to the well materials with which the waste is expected to come into contact throughout the life of the well. The demonstration shall include a description of the methodology used to make that determination.

(h) Ambient monitoring.

(1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect fluid movement, the executive director shall require the owner or operator to develop a monitoring program. When prescribing a monitoring system, the executive director may also require:

(A) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When a monitor well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the executive director;

(B) the use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the executive director, or to provide other site-specific [~~site specific~~] data;

(C) periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(D) periodic monitoring of the ground water quality in the lowermost USDW; and

(E) any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

(2) The pressure buildup in the injection zone shall be monitored annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(i) Any other monitoring and testing requirements which the executive director determines to be necessary including, but not limited to, monitoring for seismic activity.

(j) The owner or operator shall submit information demonstrating to the satisfaction of the executive director that the waste stream and its anticipated reaction products will not alter the permeability, thickness, or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in §331.121(c) of this title (relating to Class I Wells).

(k) Class I Wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals shall comply with the following monitoring and testing requirements:

(1) Monitoring requirements. Monitoring requirements shall, at a minimum, include:

(A) The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

(B) Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

(C) Installation and use of monitoring wells within the area of review if required by the executive director, to monitor any migration of fluids into and pressure in the USDW [~~underground sources of drinking water~~]. The type, number and location of the wells, the parameters to be measured, and the frequency of monitoring must be approved by the executive director;

(D) A demonstration of mechanical integrity pursuant to paragraph (4) of this subsection at least once every five years during the life of the well; and

(E) The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDW [~~underground sources of drinking water~~], the parameters to be measured and the frequency of monitoring.

(2) When the executive director determines that an injection well lacks mechanical integrity pursuant to paragraph (4) of this subsection, the executive director shall give written notice of his determination to the owner or operator. Unless the executive director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the executive director's determination. The executive director may allow plugging of the well in accordance with the requirements of §331.46 of this title (relating to Closure Standards) or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the executive director that the owner or operator has demonstrated mechanical integrity under paragraph (4) of this subsection.

(3) The executive director may allow the owner or operator of a well which lacks mechanical integrity under paragraph (4) of this subsection to continue or resume injection if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

(4) Mechanical Integrity Testing. An injection well has mechanical integrity if:

(A) There is no significant leak in the casing, tubing or packer; and

(B) There is no significant fluid movement into an USDW [~~underground source of drinking water~~] through vertical channels adjacent to the injection well bore.

(5) One of the following methods shall be used to evaluate the absence of significant leaks under paragraph (4)(A) of this subsection:

(A) Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the executive director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface; or

(B) Pressure test with liquid or gas.

(6) The results of a temperature or noise log must be used to determine the absence of significant fluid movement under paragraph (4)(B) of this subsection.

(7) The executive director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraph (5)(A) and (B) of this subsection with the written approval of the executive director. To obtain approval, the permittee shall submit a written request to the executive director, which shall set forth the proposed test and all technical data supporting its use. The executive director shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed.

(8) In conducting and evaluating the tests enumerated in this section or others to be allowed by the executive director, the owner or operator and the executive director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the executive director, he shall include a description of the test(s) and the method(s) used. In making his evaluation, the executive director shall review monitoring and other test data submitted since the previous evaluation.

(9) The executive director may require additional or alternative tests if the results presented by the owner or operator under §331.64(k)(5) of this title (relating to Monitoring and Testing Requirements) are not satisfactory to the executive director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

(10) Ambient monitoring.

(A) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the executive director shall require the owner or operator to develop a monitoring program. At a minimum, the executive director shall require monitoring of the pressure buildup in the injection zone annually, including a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(B) When prescribing a monitoring system the executive director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the executive director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the executive director, or to provide other site-specific [~~site specific~~] data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

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

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SUBCHAPTER G. CONSIDERATION PRIOR TO PERMIT ISSUANCE

30 TAC §331.121

Statutory Authority

The amendment is proposed 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, §27.019, which authorizes the commission to adopt rules to implement the statutes regarding injection wells. Additionally, the amendment is proposed 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, 5.013, 5.122, 26.011, and 27.019, and THSC, §361.024.

§331.121. Class I Wells.

(a) The commission shall consider the following before issuing a Class I Injection Well Permit:

(1) all information in the completed application for permit;

(2) all information in the Technical Report submitted with the application for permit in accordance with §305.45(a)(8) of this title (relating to Contents of Application for Permit). Subparagraphs (A) - (Q) [~~(A)~~ - ~~(R)~~] of this paragraph apply to all Class I wells except those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Information to be considered includes, but is not limited to:

(A) a map showing the location of the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(B) a tabulation of all wells within the area of review which penetrate the injection zone or confining zone, and for salt dome cavern disposal wells, the salt dome cavern injection zone, salt dome cavern confining zone and caprock. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the executive director may require;

(C) the protocol followed to identify, locate, and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(D) maps and cross-sections indicating the general vertical and lateral limits of underground sources of drinking water (USDWs) and freshwater aquifers, their positions relative to the injection formation and the direction of water movement, where known, in each USDW or freshwater aquifer which may be affected by the proposed injection;

(E) maps, cross-sections, and description of the geologic structure of the local area;

(F) maps, cross-sections, and description of the regional geologic setting;

(G) proposed operating data:

(i) average and maximum daily injection rate and volume of the fluid or waste to be injected over the anticipated life of the injection well;

(ii) average and maximum injection pressure;

(iii) source of the waste streams;

(iv) an analysis of the chemical and physical characteristics of the waste streams;

(v) for salt dome cavern waste disposal, the bulk waste density, permeability, porosity, and compaction rate, as well as the individual physical characteristics of the wastes and transporting media;

(vi) for salt dome cavern waste disposal, the results of tests performed on the waste to demonstrate that the waste will remain solid under cavern conditions; and

(vii) any additional analyses which the executive director may reasonably require;

(H) proposed formation testing program to obtain an analysis of the chemical, physical, and radiological characteristics of formation fluids, and other information on the injection zone and confining zone;

(I) proposed stimulation program, if needed;

(J) proposed operation and injection procedures;

(K) engineering drawings of the surface and subsurface construction details of the injection well [~~and pre-injection units, except that pre-injection units registered under the provisions of §331.17 of this title (relating to Pre-injection Units Registration) shall be considered under that section~~];

(L) contingency plans, based on a reasonable worst-case [~~worst case~~] scenario, to cope with all shut-ins; loss of cavern integrity, or well failures so as to prevent migration of fluid into any USDW;

(M) plans (including maps) for meeting the monitoring requirements of this chapter, such plans shall include all parameters, test methods, sample methods, and quality assurance procedures necessary and used to meet these requirements;

(N) for wells within the area of review which penetrate the injection zone or confining zone but are not adequately constructed, completed, or plugged, the corrective action proposed to be taken;

(O) construction procedures including a cementing and casing program, contingency cementing plan for managing lost circulation zones and other adverse subsurface conditions, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing, and coring program;

(P) delineation of all faults within the area of review, together with a demonstration, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; and

(Q) the authorization status [~~under this chapter~~] of the pre-injection units for the injection well.[~~; and~~]

[~~(R) information demonstrating compliance with the applicable design criteria of Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems), for pre-injection units associated with Class I nonhazardous, noncommercial injection wells.~~]

(3) This paragraph applies to those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. Information to be considered includes, but is not limited to:

(A) a map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(B) a tabulation of data on all wells within the area of review that penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the executive director may require;

(C) a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary;

(D) maps and cross sections indicating the general vertical and lateral limits of all USDW [~~underground sources of drinking water~~] within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each USDW [~~underground source of drinking water~~] which may be affected by the proposed injection;

(E) maps and cross sections detailing the geologic structure of the local area;

(F) generalized maps and cross sections illustrating the regional geologic setting;

(G) proposed operating data:

(i) average and maximum daily rate and volume of the fluid to be injected;

(ii) average and maximum injection pressure; and

(iii) source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

(H) proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

(I) proposed stimulation program;

(J) proposed injection procedure;

(K) schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(L) contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW [~~underground source of drinking water~~];

(M) plans (including maps) for meeting the monitoring requirements in §331.64 of this title (relating to Monitoring and Testing Requirements);

(N) for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under §331.45(2)(G) of this title (relating to Executive Director Approval of Construction and Completion); and

(O) construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and

(4) whether the applicant will assure, in accordance with Chapter 37, Subchapter Q of this title (relating to Financial Assurance for Underground Injection Control Wells), the resources necessary to close, plug, abandon, and if applicable, provide post-closure care for the well and/or waste disposal cavern as required;

(5) the closure plan, corrective action plan, and post-closure plan submitted in the technical report accompanying the permit application; except that a post-closure plan is not required for those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals; and

(6) any additional information required by the executive director for the evaluation of the proposed injection well.

(b) In determining whether the use or installation of an injection well is in the public interest under Texas Water Code, §27.051(a)(1), the commission shall also consider:

(1) the compliance history of the applicant in accordance with Texas Water Code, §27.051(e) and §281.21(d) of this title (relating to Draft Permit, Technical Summary, Fact Sheet, and Compliance History);

(2) whether there is a practical, economic and feasible alternative to an injection well reasonably available to manage the types and classes of hazardous waste;

(3) if the injection well will be used for the disposal of hazardous waste, whether the applicant will maintain liability coverage for bodily injury and property damage to third parties that is caused by sudden and nonsudden accidents in accordance with Chapter 37 of this title (relating to Financial Assurance); and

(4) that any permit issued for a Class I injection well for disposal of hazardous wastes generated on site requires a certification by the owner or operator that:

(A) the generator of the waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to economically practicable; and

(B) injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

(c) The commission shall consider the following minimum criteria for siting before issuing a Class I injection well permit for all Class I wells except those Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals. For Class I wells authorized to inject only nonhazardous desalination concentrate or nonhazardous drinking water treatment residuals, only paragraph (1) of this subsection applies.

(1) All Class I injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing, within 1/4 mile of the wellbore, a USDW or freshwater aquifer.

(2) The siting of Class I injection wells shall be limited to areas that are geologically suitable. The executive director shall determine geologic suitability based upon:

(A) an analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(B) an analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure, and rock properties, aquifer hydrodynamics, and mineral resources; and

(C) a determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of analytical and numerical models.

(3) Class I injection wells shall be sited such that:

(A) the injection zone has sufficient permeability, porosity, thickness, and areal extent to prevent migration of fluids into USDWs or freshwater aquifers;

(B) the confining zone:

(i) is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW or freshwater aquifer; and

(ii) contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing initiation and/or propagation of fractures.

(4) The owner or operator shall demonstrate to the satisfaction of the executive director that:

(A) the confining zone is separated from the base of the lowermost USDW or freshwater aquifer by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW or freshwater aquifer in the event of fluid movement in an unlocated borehole or transmissive fault; or

(B) within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW or freshwater aquifer, considering density effects, injection pressures, and any significant pumping in the overlying USDW or freshwater aquifer; or

(C) there is no USDW or freshwater aquifer present;

(D) the commission may approve a site which does not meet the requirements in subparagraphs (A), (B), or (C) of this paragraph if the owner or operator can demonstrate to the commission that because of the geology, nature of the waste, or other considerations, that abandoned boreholes or other conduits would not cause endangerment of USDWs, and fresh or surface water.

(d) The commission shall also consider the following additional information, which must be submitted in the technical report of the application as part of demonstrating that the facility will meet the performance standard in §331.162 of this title (relating to Performance Standard), before issuing a salt dome cavern Class I injection well permit:

(1) a thorough characterization of the salt dome to establish the geologic suitability of the location, including:

(A) data and interpretation from all appropriate geophysical methods (such as well logs, seismic surveys, and gravity surveys), subject to the approval of the executive director, necessary to:

(i) map the overall geometry of the salt dome, including all edges and any suspected overhangs of the salt stock;

(ii) demonstrate the existence of a minimum distance of 500 feet between the boundaries of the proposed salt dome cavern injection zone and the boundaries of the salt stock;

(iii) define the composition and map the top and thickness of the sedimentary rock units between the caprock and surface, including the flanks of the salt stock;

(iv) define the composition and map the top and thickness of the caprock overlying the salt stock;

(v) map the top of the salt stock;

(vi) calculate the movement and the salt loss rate of the salt stock;

(vii) define any other caverns and other uses of the salt dome, and address any conditions that may result in potential adverse impact on the salt dome; and

(viii) satisfy any other requirement of the executive director necessary to demonstrate the geologic suitability of the location;

(B) a surface-recorded three-dimensional seismic survey, subject to the following minimum requirements:

(i) the lateral extent of the survey will be determined by the executive director; and

(ii) the survey must provide information as part of demonstrating that the location is geologically suitable for the purpose of meeting the performance standard in §331.162 of this title;

(C) identification of any unusual features, such as depressions or lineations observable at the land surface or within or detectable within the subsurface, which may be indicative of underlying anomalies in the caprock or salt stock, which might affect construction, operation, or closure of the cavern;

(D) the petrology of the caprock, salt stock, and deformed strata; and

(E) for strata surrounding the salt stock, information on their nature, structure, hydrodynamic properties, and relationships to USDWs, including a demonstration that the proposed salt dome cavern injection zone will not be in or above a formation which within 1/4 mile of the salt dome cavern injection zone contains a USDW;

(2) establishment of a pre-development baseline for subsidence and groundwater monitoring, over the area of review;

(3) characterization of the predicted impact of the proposed operations on the salt stock, specifically the extent of the disturbed zone;

(4) demonstration of adequate separation between the outer limits of the injection zone and any other activities in the domal area. The thickness of the disturbed zone, as well as any additional safety factors will be taken into consideration; and

(5) the commission will consider the presence of salt cavern storage activities, sulfur mining, salt mining, brine production, oil and gas activity, and any other activity which may adversely affect or be affected by waste disposal in a salt cavern.

(e) Information requirements for Class I hazardous waste injection well permits.

(1) The following information is required for each active Class I hazardous waste injection well at a facility seeking an underground injection control permit:

(A) dates well was operated; and

(B) specification of all wastes that have been injected in the well, if available.

(2) The owner or operator of any facility containing one or more active hazardous waste injection wells must submit all available information pertaining to any release of hazardous waste or constituents from any active hazardous waste injection well at the facility.

(3) The owner or operator of any facility containing one or more active Class I hazardous waste injection wells must conduct such preliminary site investigations as are necessary to determine whether a release is occurring, has occurred, or is likely to have occurred.

(f) Interim Status under the Resource Conservation Recovery Act (RCRA) for Class I hazardous waste injection wells. The minimum state standards which define acceptable injection of hazardous waste during the period of interim status are set out in this chapter. The issuance of an underground injection well permit does not automatically terminate RCRA interim status. A Class I well's interim status does, however, automatically terminate upon issuance of a RCRA permit for that well, or upon the well's receiving a RCRA permit-by-rule under §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule). Thus, until a Class I well injecting hazardous waste receives a RCRA permit or RCRA permit-by-rule, the well's interim status requirements are the applicable requirements imposed under this chapter, including any requirements imposed in the underground injection control permit.

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

Filed with the Office of the Secretary of State on July 31, 2020.

TRD-202003115
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 13, 2020
For further information, please call: (512) 239-2678

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.6

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.6, concerning Audit of Managed Care Organizations. The amendment to §353.6 is adopted with changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1753). The rule will be republished.

BACKGROUND AND JUSTIFICATION

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015, directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and HHSC-Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted 1 Texas Administrative Code (TAC) §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Division, the Health and Human Services (HHS) Internal Audit Division, and HHSC-OIG are responsible for audits of MCOs and any entity with which an MCO contracts.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as required by S.B. 200 and S.B. 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The amendment to §353.6 is necessary to implement the Sunset Advisory Commission's recommendation by codifying in rule a more detailed description of the coordination between HHSC and HHSC-OIG in planning and conducting audits of MCOs. The adoption of the counterpart to this rule, §371.37, which concerns Audit of Managed Care Organizations by HHSC-OIG, is published elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended April 13, 2020. During this period, HHSC received comments regarding the proposed rule from the Texas Association of Health Plans, Superior HealthPlan, and Evolving Steps Counseling. A summary of comments relating to the rule, and HHSC responses, follows.

Comment: One commenter recommends not changing "MCO subcontractors" to "any entity with which an MCO contracts," as proposed in §353.6(b).

Response: HHSC made the change in §353.6(b) to make the rule consistent with how §371.37(b) refers to entities with which an MCO contracts.

Comment: Two commenters recommend that HHSC add language to §353.6 that would require HHSC to conduct each audit based on the standards outlined in the Generally Accepted Government Auditing Standards.

Response: Section 353.6 focuses on HHSC's roles and responsibilities in coordinating with HHSC-OIG when HHSC conducts audits of MCOs. Additionally, Texas Government Code §2102.011 already requires audits performed by HHS Internal Audit to conform to generally accepted governmental auditing standards. No change was made in response to this comment.

Comment: One commenter states that it is glad to see HHSC and HHSC-OIG making changes to rules to improve coordination and eliminate duplication, it agrees with language in the rules requiring HHSC and HHSC-OIG to coordinate audits to eliminate duplication of audit efforts, and it supports language in the rules requiring the development of audit plans.

Response: HHSC appreciates the supportive comment. No change was made in response to this comment.

Comment: One commenter states that, because HHSC uses old time periods for audits, policies and practices may have changed resulting in non-applicable or non-actionable audit findings. Therefore, this commenter believes it would be beneficial for HHSC to stay current on their audits and target more recent time periods.

Response: HHSC audits of MCOs, and resulting findings, are based on the statutory, regulatory, and contractual requirements in effect for the time period to be examined by the audit. Additionally, HHSC complies with all legal timeframes when choosing a particular time period to be examined by the audit. No change was made in response to this comment.

Comment: One commenter asserts that there is no benefit to multiple entities performing multiple financial audits each year, rather each entity should limit their audit to one of those types of audits per year.

Response: HHSC and HHSC-OIG strive, to the extent possible, to minimize duplication of oversight of managed care plans under

Medicaid, as provided by Texas Government Code §533.015(a). No change was made in response to this comment.

Comment: One commenter states that MCOs should only be audited on existing statutory, regulatory, and contractual requirements. The commenter states further that, if during an audit, HHSC-OIG, HHSC, or any other entity believes an MCO should be conducting business in a manner that is not a current requirement either federally or by the State, that position should not be a finding, rather a discussion on potential policy changes. The commenter believes it is extremely important that findings in published audits are due to an MCO not following an existing policy and it is unreasonable to hold MCOs to a standard that is not in their contract or federally required.

Response: HHSC oversight of MCOs, and resulting findings, are based on the statutory, regulatory, and contractual requirements in effect for the time period to be examined by the review. HHSC may also identify control weaknesses or other risk factors that could contribute to future non-compliance and may offer recommendations to audited entities to address those issues. Additionally, HHSC complies with all legal timeframes when choosing a particular time period to be examined for an audit. No change was made in response to this comment.

Comment: One commenter recommends that HHSC also develop rules requiring coordination with the Texas Department of Insurance.

Response: HHSC appreciates the commenter's recommendation, however, the recommendation is beyond the scope of this rulemaking. The amendment to §353.6 implements the statutory requirements of Texas Government Code §533.015(b) by focusing on coordination between HHSC-OIG and HHSC in performing audits of MCOs. No change was made to the rule in response to this comment.

HHSC made a minor editorial change in §353.6(a) to replace "their subcontractors" with "any entity with which an MCO contracts" to make terminology in §353.6(a) consistent with §353.6(b).

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; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §533.015, which requires the Executive Commissioner, after consulting with HHSC-OIG, to adopt rules defining the coordination between HHSC and HHSC-OIG in the performance of audits of MCOs; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

§353.6. Audit of Managed Care Organizations.

(a) The Health and Human Services Commission (HHSC), through the Medicaid and CHIP Services Division, the Office of Inspector General (OIG), and Health and Human Services (HHS) Internal Audit Division, is responsible for audits of MCOs and any entity with which an MCO contracts.

(b) For purposes of this rule, "MCO" includes any entity with which an MCO contracts.

(c) HHSC conducts audits of MCOs, including financial audits, performance audits, compliance audits, and agreed upon procedures:

(1) with the scope and frequency necessary to provide information to allow for the effective oversight and control of the MCOs; and

(2) as necessary to comply with all federal and state laws.

(d) Medicaid and CHIP Services Division's roles and responsibilities for audits of MCOs include:

(1) determining, based on coordination with OIG about MCO audits, which audits to assign to contracted audit firms in order to eliminate duplication of audit effort and reduce the impact of potentially duplicative audits on the MCOs;

(2) coordinating with HHS Internal Audit Division to obtain delegated authority, from the State Auditor's Office (SAO), to procure audit services as required by Texas Government Code §321.020;

(3) facilitating and determining the extent of work to be performed in agreed upon procedures and audits of MCOs, through the use of contracted audit firms as part of the integrated business processes used to oversee and monitor MCOs;

(4) providing final reports of agreed upon procedures and audits to OIG, along with other information relevant to quantifying MCO performance under the contract with HHSC, including results of on-site monitoring visits, and other relevant MCO-related performance information;

(5) providing all deliverables, such as contracts, contract amendments, and audit reports, for contracted audit related engagements to HHS Internal Audit Division for delivery to the SAO; and

(6) ensuring actions planned to address audit recommendations are implemented, including actions planned by the Medicaid and CHIP Services Division or by an MCO.

(e) The OIG's roles and responsibilities, related to performing audits of MCOs, are as outlined in §371.37 of this title (relating to Audit of Managed Care Organizations).

(f) HHS Internal Audit Division's roles and responsibilities, related to audits of MCOs, are:

(1) auditing the Medicaid and CHIP Services Division and OIG, as part of its established audit authority and risk-based audit coverage, including auditing the effectiveness of coordination between the Medicaid and CHIP Services Division and OIG on the performance of MCO audits;

(2) notifying and conferring with the Medicaid and CHIP Services Division and OIG before initiating an audit of an MCO contained in the audit plan approved by the HHS Executive Commissioner;

(3) coordinating with Medicaid and CHIP Services Division when audit services need to be procured to ensure HHSC obtains the appropriate authority to procure audit services from the SAO; and

(4) coordinating with Medicaid and CHIP Services Division to ensure that all appropriate documents related to contracted audit services are obtained and provided to the SAO. These documents include executed contracts, contract amendments, and audit reports.

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 July 28, 2020.

TRD-202003073
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 17, 2020
Proposal publication date: March 13, 2020
For further information, please call: (512) 491-4096

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CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

1 TAC §371.37

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §371.37, concerning Audit of Managed Care Organizations.

The amendment to §371.37 is adopted without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1755). The rule will not be republished.

BACKGROUND AND PURPOSE

Texas Government Code §533.015(b), as amended by Senate Bill (S.B.) 200 and S.B. 207, 84th Legislature, Regular Session, 2015, directed the HHSC Executive Commissioner to issue rules defining the coordination between HHSC and HHSC-Office of Inspector General (HHSC-OIG) in conducting audits of managed care organizations (MCOs) participating in Medicaid.

To comply with Texas Government Code §533.015(b), HHSC adopted 1 Texas Administrative Code (TAC) §353.6 and §371.37, effective July 14, 2016. These rules assign authority to the HHSC Executive Commissioner for establishing policy outlining the roles and responsibilities of divisions, departments, and offices of HHSC in performing audits of MCOs. The HHSC Medicaid and CHIP Services Division (MCSD), the Health and Human Services (HHS) Internal Audit Division, and HHSC-OIG are responsible for audits of MCOs and any entity with which an MCO contracts.

In 2017, the Sunset Advisory Commission reported to the 85th Legislature that HHSC and HHSC-OIG had defined their respective audit roles, jurisdiction, and frequency in the HHSC Circular C-054, but the details were not defined in rule, as required by S.B. 200 and S.B. 207. The Sunset Advisory Commission recommended that the policies be prescribed in rule.

The amendment to §371.37 is necessary to implement the Sunset Advisory Commission's recommendation by codifying in rule a more detailed description of the coordination between HHSC and HHSC-OIG in planning and conducting audits of MCOs. The adoption of the counterpart to this rule, §353.6, which concerns Audit of Managed Care Organizations by HHSC, is published elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended April 13, 2020. During this period, HHSC received comments regarding the proposed rule from the Texas Association of Health Plans, Superior HealthPlan, and Evolving Steps Counseling. A summary of comments relating to the rule, and HHSC responses, follow.

Comment: One commenter recommends that since HHSC-OIG is an office within HHSC it should keep the existing language in §371.37(a) and (b).

Response: While HHSC-OIG is an office within HHSC, the sentence added in the proposed amendment to §371.37(a) is based on the statutory requirements in Texas Government Code §531.102(a-5) and (a-6). The phrase "conducted independent of [HHSC]" is taken directly from Texas Government Code §531.102(a-6). In the proposed amendment to §371.37(a), HHSC also removed the reference to §353.6(d), which says "The HHSC Executive Commissioner establishes policy outlining the roles and responsibilities of the divisions and offices of HHSC [including OIG] in performing audits of participating MCOs" because the Executive Commissioner's policy establishing these roles and responsibilities is outlined in §371.37 and §353.6, as adopted in this issue of the *Texas Register.*

With respect to the proposed amendment to §371.37(b), OIG has broad regulatory authority to audit an MCO and the entities with which an MCO contracts to perform services under an MCO contract. HHSC-OIG has authority under 1 TAC §371.1603 to take administrative enforcement measures against any individual, partnership, corporation, professional entity, or other legal entity, based on an audit finding in the Medicaid or other HHS programs. HHSC-OIG's roles and responsibilities for coordinating with HHSC on audits of MCOs, as set forth in §371.37, apply to an HHSC-OIG audit of any entity with which an MCO contracts. Almost all of the language stricken in the amendment to §371.37(b) has been moved to other parts of the rule (see paragraphs (1), (3) and (9) in §371.37(c)). No change was made in response to this comment.

Comment: Two commenters recommend that HHSC add language to §371.37 that would require HHSC-OIG to conduct each audit based on the standards outlined in the Generally Accepted Government Auditing Standards.

Response: Section 371.37 focuses on HHSC-OIG's roles and responsibilities in coordinating with HHSC when HHSC-OIG conducts audits of MCOs. Additionally, 1 TAC §371.1719(b) already requires audits performed by HHSC-OIG to be "conducted and reported in accordance with Generally Accepted Governmental Auditing Standards or other appropriate standards recognized by the United States Government Accountability Office." No change was made in response to this comment.

Comment: One commenter states that it is glad to see HHSC and HHSC-OIG making changes to rules to improve coordination and eliminate duplication, it agrees with language in the rules requiring HHSC and HHSC-OIG to coordinate audits to eliminate duplication of audit efforts, and it supports language in the rules requiring the development of audit plans.

Response: HHSC appreciates the supportive comment. No change was made in response to this comment.

Comment: One commenter states that, because the State uses old time periods for audits, policies and practices may have changed resulting in non-applicable or non-actionable audit findings. Therefore, this commenter believes it would be beneficial for the State to stay current on their audits and target more recent time periods.

Response: HHSC-OIG audits of MCOs, and resulting findings, are based on the statutory, regulatory, and contractual require-

ments in effect for the time period to be examined by the audit. Additionally, HHSC-OIG complies with all legal timeframes when choosing a particular time period to be examined by the audit. No change was made in response to this comment.

Comment: One commenter asserts that there is no benefit to multiple entities performing multiple financial audits each year, rather each entity should limit their audit to one of those types of audits per year.

Response: HHSC and HHSC-OIG strive, to the extent possible, to minimize duplication of oversight of managed care plans under Medicaid, as provided by Texas Government Code §533.015(a). However, Texas Government Code §531.102(a) places responsibility on HHSC-OIG for the "prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state." Risk assessments, data mining, fraud referrals, or other factors may indicate an HHSC-OIG audit is necessary to fulfill its statutory responsibility in those specific circumstances, regardless of whether a more general financial audit was performed by others. No change was made in response to this comment.

Comment: One commenter states that MCOs should only be audited on existing statutory, regulatory, and contractual requirements. The commenter states further that, if during an audit, HHSC-OIG, HHSC, or any other entity believes an MCO should be conducting business in a manner that is not a current requirement either federally or by the State, that position should not be a finding, rather a discussion on potential policy changes. The commenter believes it is extremely important that findings in published audits are due to an MCO not following an existing policy and it is unreasonable to hold MCOs to a standard that is not in their contract or federally required.

Response: HHSC-OIG audits of MCOs, and resulting findings, are based on the statutory, regulatory, and contractual requirements in effect for the time period to be examined by the audit. HHSC-OIG may also identify control weaknesses or other risk factors that could contribute to future noncompliance and may offer recommendations to audited entities to address those issues. Additionally, HHSC-OIG complies with all legal timeframes when choosing a particular time period to be examined for an audit. No change was made in response to this comment.

Comment: One commenter recommends that HHSC also develop rules requiring coordination with the Texas Department of Insurance.

Response: HHSC appreciates the commenter's recommendation, however, the recommendation is beyond the scope of this rulemaking. The amendment to §371.37 implements the statutory requirements of Texas Government Code §533.015(b) by focusing on coordination between HHSC-OIG and HHSC in performing audits of MCOs. No change was made to the rule in response to this comment.

Comment: One commenter proposes adding the following language at the end of amended §371.37(a): "with a target goal of limiting the audits of the MCOs to one audit each year and with the goal of auditing recent time periods that cover a time span no greater than 18-24 months from the date that the audit is initiated."

Response: HHSC and HHSC-OIG strive, to the extent possible, to minimize duplication of oversight of managed care plans under Medicaid, as provided by Texas Government Code §533.015(a). However, Texas Government Code §531.102(a) places responsibility on HHSC-OIG for the "prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state." Risk assessments, data mining, fraud referrals, or other factors may indicate an HHSC-OIG audit is necessary to fulfill its statutory responsibility in those specific circumstances, regardless of whether another similar audit was performed recently. Additionally, HHSC-OIG complies with all legal timeframes when choosing a particular time period to be examined for an audit. No change was made in response to this comment.

Comment: One commenter recommends adding the following language at the end of amended §371.37(c)(1): "and determining, based on coordination with the HHS Internal Audit Division regarding MCO audits, which audits to perform in order to eliminate duplication of audit effort and reduce the impact of duplicative and multiple audits on the MCOs in a single year."

Response: HHSC and HHSC-OIG strive, to the extent possible, to minimize duplication of oversight of managed care plans under Medicaid, as provided by Texas Government Code §533.015(a). However, Texas Government Code §531.102(a) places responsibility on HHSC-OIG for the "prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state." Risk assessments, data mining, fraud referrals, or other factors may indicate an HHSC-OIG audit is necessary to fulfill its statutory responsibility in those specific circumstances, regardless of whether another similar audit was performed recently. No change was made in response to this comment.

Comment: One commenter recommends adding language to §371.37(c)(1) and (9) that would ensure audits are based on contractual requirements.

Response: HHSC-OIG's audit authority is not limited to audits based on contractual requirements. There are other legal requirements on MCOs in the delivery of health care, including federal and state statutes, regulation, and rules. No change was made in response to this comment.

Comment: One commenter recommends adding language to §371.37(c) that would require HHSC-OIG to (i) communicate preliminary results of MCO audits to the MCO for review and comment, (ii) consider MCO comments before finalizing MCO audit report recommendations, and (iii) share proposed audit findings with the MCO before issuing a final report to the MCO or to MCSD.

Response: Section 371.37 focuses on HHSC-OIG's roles and responsibilities in coordinating with HHSC when HHSC-OIG conducts audits of MCOs. Title 1 TAC §371.1719(b) - (d) specifically addresses HHSC-OIG audit procedures, notices, and due process requirements, including an auditee's right to receive a draft audit report and to provide a written management response to the draft audit report. No change was made in response to this comment.

Comment: One commenter submits comments, concerns and suggests a solution related to particular practices of MCOs located in the region where the commenter works.

Response: HHSC appreciates the thoughtful comment, however, it does not specifically address any proposed amendment to §371.37 and is beyond the scope of this rulemaking. These recommendations have been forwarded on to the relevant HHSC program area for review. No change was made in response to this comment.

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; §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; §533.015, which requires the Executive Commissioner, after consulting with HHSC-OIG, to adopt rules defining the coordination between HHSC and HHSC-OIG in the performance of audits of MCOs; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

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 July 28, 2020.

TRD-202003074
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: March 13, 2020
For further information, please call: (512) 491-4096

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts the repeal of 16 TAC §24.41, relating to cost of service; adopts new 16 TAC §24.41, relating to cost of service, and new 16 TAC §24.238, relating to fair market value; and also adopts amendments to 16 TAC §24.239, relating to sale, transfer, merger, consolidation, acquisition, lease or rental, and 16 TAC §24.243, relating to purchase of voting stock or acquisition of a controlling interest in a utility. New §24.238 is adopted with changes to the proposed text as published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2795) and will be republished. The repeal of §24.4, new §24.41, and the amendments to §24.239 and §24.243 are adopted without changes to the proposed text as published and will not be republished.

New rule §24.238 implements House Bill 3542 (HB 3542), passed in the 86th Legislature, Regular Session, which established a fair market valuation process that may be used by a Class A or Class B water or sewer utility that is acquiring another retail public utility or the facilities of another retail public utility. New rule §24.41 incorporates relevant aspects of proposed new rule §24.238 and will replace existing §24.41. New rule §24.41 also includes clarifying changes. The amendments to §24.239 incorporate relevant aspects of proposed new rule §24.238. The Commission adopts the repeal, new rules, and amendments in Project No. 49813.

New rule §24.238 implements House Bill 3542 (HB 3542), passed in the 86th Legislature, Regular Session, which established a fair market valuation process that may be used by a Class A or Class B water or sewer utility that is acquiring another retail public utility or the facilities of another retail public utility. New rule §24.41 incorporates relevant aspects of proposed new rule §24.238 and will replace existing §24.41. New rule §24.41 also includes clarifying changes. The amendments to §24.239 incorporate relevant aspects of proposed new rule §24.238. The Commission adopts the repeal, new rules, and amendments in Project No. 49813.

No public hearing was requested so no public hearing was held.

The Texas Association of Water Companies (TAWC) and National Association of Water Companies (NAWC) jointly submitted comments on the proposed new rule. The Office of Public Utility Counsel (OPUC), CSWR-Texas Utility Operating Company (CSWR Texas), and SJWTX, Inc. d/b/a Canyon Lake Water Service Company, LLC (CLWSC) also submitted comments.

TAWC and NAWC jointly submitted reply comments. OPUC, CSWR Texas, and the City of Houston (Houston) also submitted reply comments.

General Comments

TAWC and NAWC generally supported the proposed §24.238 and requested changes intended to improve the new fair market valuation process and encourage regionalization of Texas water and sewer systems. OPUC supported the overall important policy objectives behind the passage of HB 3542 and the proposed new rule. OPUC believed it is necessary to carefully evaluate the potential rate impacts of the proposed new fair market valuation rule. OPUC supported the creation of safeguards and criteria to help protect consumers from potential rate increases or other unintended consequences. CSWR Texas supported adoption of the proposed rule but encouraged the commission to consider certain changes to make the valuation procedures and the sale, transfer, merger (STM) approval process more efficient and cost-effective when the acquisition involves smaller water or wastewater systems in need of immediate investment to address critical water quality concerns.

In reply comments, TAWC and NAWC provided a general statement in support of the section-specific initial comments submitted by CLWSC and CSWR Texas.

Commission Response

The commission will respond to comments related to specific rule provisions in the discussion of those provisions.

§24.41(c)(2)(C)(i), Estimates and Trending Studies

Proposed §24.41(c)(2)(C)(i) provides that the commission may adjust rate base and the rate of return on equity associated with cost of plant and equipment that has been estimated by trending studies or other methods not based on historical records. TAWC and NAWC requested language that would permit the use of estimated or trending studies in lieu of historical records without a potential "penalty" detrimental to the financial integrity of the utility. TAWC and NAWC commented that often historical records are not available or are not reliable for a variety of reasons, and suggested that the fair market value process could be viewed as one method of estimation of original cost, and as such, the proposed rule language would conflict with new Texas Water Code

(TWC) §13.305. Alternatively, TAWC and NAWC suggested that §24.41(c)(2)(C)(i) could be eliminated altogether because there is no similar language in TWC Chapter 13.

OPUC generally advised caution when using trending studies or other methods that are not based on historical documentation to establish original cost. OPUC recognized that adequate historical records and documentation are not always available for older and smaller water utility systems and supported allowing the use of trending studies or other estimation methods for older and smaller water utilities, as long as ratepayers are protected from use of potentially speculative methods to establish original cost.

In reply comments, TAWC and NAWC stated that they interpreted OPUC's comments as generally supportive of trending studies or other estimation methods for original cost. However, TAWC and NAWC sought clarification that there will not be a risk of incurring a potential "penalty" detrimental to the financial integrity of the utility, such as an adjustment to rate base or rate of return on equity simply for using these types of estimation methods.

CSWR Texas stated that OPUC's position encouraging the commission to use a higher standard of review for "overly speculative" valuations that are not supported by historical records and documentation is antithetical to the Legislature's intent to remove roadblocks to the acquisition of smaller older systems.

CSWR Texas supported inclusion of TAWC and NAWC's proposed changes. CSWR Texas also stated its support for the use of alternative valuation methods, such as real estate appraisals, that can be performed more quickly and at a lower cost than the fair market value process. CSWR Texas stated that the commission should encourage use of alternative valuation methods to incentivize the acquisition of smaller, older systems and that "threatening to penalize" a utility's rate base or rate of return when the utility may have no other choice but to utilize trending studies or other methods to set rate base does not provide such encouragement. CSWR Texas further stated that the commission already has the authority to deny rate base amounts it finds unreasonable so there is simply no need for the commission to "threaten" to reduce a utility's rate of return when it can simply deny costs it finds unreasonable.

Commission Response

Proposed §24.41(c)(2)(C)(i) is substantively the same as existing §24.41(c)(2)(B)(i). The commission currently allows original cost of plant and equipment to be based on trending studies or other estimation methods when historical records are unavailable, but may adjust rate base or rate of return when appropriate to ensure just and reasonable rates. The commission agrees with CSWR Texas that the commission has the authority to exclude unreasonable costs from rate base. The commission also has the authority to adjust the rate of return applied to the rate base. For example, TWC §13.184(b) requires the commission to consider, among other things, the quality of the utility's management in fixing a reasonable return on invested capital. Absence of records relating to original cost of plant or equipment could, in some cases, be a sign of the quality of the utility's management. The proposed rule does not require the commission to make adjustments to rate base or rate of return, but reflects the commission's authority to do so.

In situations where the fair market valuation process is not used, TWC §13.185(b) requires rates to be set based on original cost of the facilities unless the commission uses alternative ratemaking approaches authorized under TWC §13.183(c). While the commission's rules permit original cost to be set based on trending studies or other estimation methods when historical records are unavailable, use of real estate appraisals is not an appropriate way to estimate the original cost of facilities because such appraisals estimate market value. Proposed §24.41(c)(2)(C)(i) is not in conflict with TWC §13.305 because it does not apply to the ratemaking rate base established under §24.238, which is governed by §24.41(c)(2)(A). The commission adopts §24.41(c)(2)(C)(i) as proposed.

§24.41(c) and (d), Return on Rate Base and Positive Acquisition Adjustments

CSWR Texas encouraged the commission to include language in the proposed rules that would allow entities that are not Class A or Class B utilities "to take advantage of the benefits of the fair market value process, even if they are not permitted to take advantage of the fair market value process itself." CSWR Texas stated that in other states it has relied on real estate appraisals to help establish rate base for systems it hopes to acquire and that use of real estate appraisals would also be considerably less expensive and time-consuming than the fair market value approach. CSWR Texas noted that "other estimating methods" are already anticipated in proposed §24.41(c)(2)(c)(i) and that use of real estate appraisals, or other reasonable estimating methods, would provide a more efficient and cost-effective alternative to the fair market value approach when the acquisition involves a smaller system, and is particularly necessary when the acquiring entity would be ineligible to participate in the fair market value process.

CSWR Texas also encouraged the commission to clarify the appropriateness of using positive acquisition adjustments, particularly where the acquiring entity is not eligible to participate in the fair market value process. CSWR Texas requested that the commission include language in the rules that would allow entities that invest in smaller systems to accrue Allowance of Funds Used During Construction (AFUDC) and defer depreciation for post-acquisition improvements in the same way provided for under the proposed rules for eligible utilities. CSWR Texas further stated that even when an acquiring utility is eligible to participate in the fair market value process, the purchase price for some systems is so small, it is unlikely the fair market value process would be used. CSWR Texas urged that acquiring entities should still be able to take advantage of the ability to accrue AFUDC and defer depreciation on post-acquisition improvements without having to spend the time and expense to seek unnecessary appraisals. CSWR Texas recommended that providing alternatives to the fair market value approach to rate base valuation for smaller water or wastewater systems, particularly when the acquiring entity is not eligible to utilize the fair market value approach, would provide flexibility and ratemaking clarity to entities seeking to acquire and upgrade those systems and ultimately result in safer, more reliable service.

Commission Response

The Commission declines to make the changes requested by CSWR. In enacting TWC §13.305, the Legislature set the parameters for use of fair market valuation to determine the ratemaking rate base purchased by the acquiring utility, including the type of utility that may use this process. The proposed rule reflects these limitations and requirements. If the fair market valuation process is not used, TWC §13.185(b) requires rates to be set based on original cost of the facilities unless the commission uses alternative ratemaking approaches authorized under TWC §13.183(c).

While the commission's rules permit original cost to be set based on trending studies or other estimation methods when historical records are unavailable, use of real estate appraisals is not an appropriate way to estimate the original cost of facilities.

§24.41(g), Intangible Assets

Proposed §24.41(g) relates to the evidence that must be used to support the inclusion of intangible assets in rate base. In both initial and reply comments, TAWC and NAWC requested that proposed §24.41(g) be removed. TAWC and NAWC stated that neither TWC Chapter 13 nor the commission's rules applicable to electric utilities contain this language and that intangible assets are routinely allowed as part of rate base for other utilities without the conditions included in this rule. TAWC and NAWC stated that intangible assets will necessarily be valued as part of the appraisals prepared for fair market value determinations and §24.41(g) should be eliminated. Alternatively, TAWC and NAWC suggested this subsection be revised to simply state that intangible assets, including but not limited to a source of supply such as water rights, must be allowed in rate base and repeated this suggestion in reply comments.

OPUC supported the commission's treatment of intangible assets under new §24.41(g), stating that intangible assets are difficult to value and quantify. OPUC stated that intangible assets have some level of value and agreed with the safeguards and requirements in the proposed rule. OPUC encouraged the commission to keep these safeguards and requirements for the protection of ratepayers from overly speculative claims about the value of intangible assets.

In both its initial and reply comments CSWR Texas objected to proposed §24.41(g) because the requirement is not included in the TWC and does not apply to electric utilities under the Public Utility Regulatory Act (PURA) or the commission's rules. CSWR Texas stated it is not clear why such a heightened burden is applied to water or wastewater utilities. CSWR Texas further commented that intangible assets like land rights are simple to appraise, contribute to the real value of a system, are included in the definition of "facilities" used to provide service under TWC §13.002(9), and also may be the only undepreciated assets that a smaller, older distressed system owns. CSWR Texas stated that this subsection should be eliminated and encouraged the commission to include language in §24.238 that permits appraisers to consider intangible assets as part of their fair market valuations.

In reply, TAWC and NAWC disagreed with OPUC that there is any justification for intangible asset or rate base qualifiers when there are no such qualifiers in place for other types of utilities the commission regulates. TAWC and NAWC argued that intangible assets are not difficult to value and quantify as OPUC contended and are routinely valued by qualified appraisers and valuation experts. TAWC and NAWC further commented that OPUC offered no specific legal or factual basis in support of what it described as "safeguards."

In reply comments, OPUC stated that the commission already disallows intangible assets unless a water utility can meet certain requirements in §24.41(f). OPUC observed that new subsection (g) is a continuation of the commission's existing treatment of intangible assets with which water utilities should already be well familiar. OPUC supported the commission's proposed requirements for intangible assets in new subsection (g) because water utilities should be required to prove through documentation and testimony the reasonableness and necessity of costs that they are seeking to pass on to ratepayers. OPUC stated that these proposed requirements are important and necessary safeguards because intangible assets should not be allowed in a water utility's rate base without a robust assessment of the asset's reasonableness, necessity, and benefits to the utility's ratepayers.

Houston disagreed with TAWC's and NAWC's request that proposed §24.41(g) be removed. Houston noted that TAWC and NAWC requested removal of a requirement that already exists in the commission's rules at §24.41(f) and stated that TAWC's and NAWC's proposal falls outside the scope intended within HB 3542. Houston commented that intangible assets, and specifically the value of water rights, are issues unique to water utilities that could have a significant impact on allowable rate base. Houston stated that inclusion of intangible assets without limitation could result in a rate base that is not reflective of the actual investment made by a utility. Therefore, Houston encouraged the commission to reject TAWC's and NAWC's proposal.

CSWR Texas stated in reply comments that electric utilities commonly include in rates the value of intangible assets like software, franchises, and organizational costs, which should not be difficult to value or require a heightened burden of proof. CSWR Texas agreed with TAWC and NAWC that §24.41(g) should be eliminated. Alternatively, CSWR Texas agreed with TAWC and NAWC's proposed changes. In addition, CSWR Texas encouraged the commission to include express language in §24.238 that intangible assets should be considered as part of fair market valuations.

Commission Response

As OPUC noted, proposed §24.41(g) is substantively the same as current §24.41(f). The commission acknowledges that 16 TAC Chapter 25, which governs electric utilities, is silent on intangible assets. However, setting rates for water utilities presents issues and challenges that differ from electric utilities and the proposed rule reflects the need for different rules in some areas. Proposed §24.41(g) requires that the utility provide documentation for the amount and nature of the asset; establish through testimony that the amount is reasonable, necessary and a benefit to customers; and establish through testimony that the amount requested is properly included as a rate base asset. These basic requirements for recovery of costs from customers are included in the rule to provide guidance to water and sewer utilities that seek to include intangible assets in rate base. The commission adopts the subsection as proposed.

The commission responds to comments about inclusion of intangible assets in fair market valuations in relation to comments on §24.238(b).

§24.238(b), Definitions--Intangible Assets

TAWC and NAWC expressed concern that intangible assets, such as water rights, will not be considered during the fair market value appraisal process use to establish ratemaking rate base. TAWC and NAWC stated that while TWC §13.305(c)(4) limits the engineer's assessment to tangible assets of the selling utility, intangible assets can be equally or even more valuable and are ordinarily considered in assessing a utility's fair market value and its purchase price. TAWC and NAWC recommended that the utility valuation experts conducting appraisals should be instructed to specifically consider intangible assets. TAWC and NAWC suggested changing the definition of ratemaking rate base to include both tangible and intangible assets.

OPUC replied that TAWC's and NAWC's requested change to §24.238(b)(4) is unnecessary because the definition of "facilities" in TWC §13.002(9) includes intangible assets.

Commission Response

The commission declines to change the definition of ratemaking rate base as requested by TAWC and NAWC. As OPUC pointed out, the definition of "facilities" in TWC §13.002(9) includes intangible assets. However, to further clarify this point, the commission modifies §24.238(f)(2) to expressly state that the appraisal performed by the utility valuation expert will include intangible assets, as appropriate.

§24.238(b), Definitions--Selling Utility

OPUC recommended that the commission modify the definition of "selling utility" in subsection (b)(5) to limit the rule's applicability to the sale of Class C and D utilities. OPUC cited Chairman Dade Phelan's statements at the House State Affairs Committee meeting on April 1, 2019 to establish that the intent of HB 3542, which enacted TWC §13.305, was to help drive investment by private companies in small communities that have an urgent need for water system infrastructure, but cannot afford needed system upgrades. OPUC maintained that HB 3542 was not intended to include the acquisition of large Class A and Class B utilities, which do not face the same financial hurdles as smaller Class C and D utilities due to economies of scale and access to more financial resources. OPUC argued that allowing the fair market value of larger, well-functioning and financially healthy Class A and B utilities in the ratemaking rate base of purchasing Class A and B utilities would result in higher costs for ratepayers.

TAWC and NAWC objected to OPUC's recommendation that the proposed rule's definition of "selling utility" should be restricted to Class C and D utilities, stating that the suggestion is contrary to the plain language of the fair market value statute. TAWC and NAWC argued that it is well established in Texas that where text is clear, text is determinative of the Legislature's intent and that the words the Legislature chooses should be the surest guide to legislative intent. TAWC and NAWC contended that if enforcement of the plain language of a statute produces an absurd result or is ambiguous, then other considerations may come into play, such as legislative history, but OPUC did not contend there is ambiguity or an absurd result produced by TWC §13.305, and thus, it is not appropriate to look to the legislative history. Moreover, TAWC and NAWC continued, comments by a single legislator about one purpose for a statute does not show the exclusion of other purposes or reflect the collective intent of the entire legislative body. TAWC and NAWC concluded that not only does the plain language of TWC §13.305 not contemplate the type of limitation OPUC suggested, it specifically makes the fair market value process available to acquisitions of retail public utilities, which include water and sewer providers that are not investor owned.

CSWR Texas opposed the limitations on the definition of selling utility proposed by OPUC. CSWR Texas stated that because it is not a Class A or B utility, it appears CSWR Texas is precluded from using the fair market valuation process and other incentives in the proposed rules. CSWR Texas argued that there is no reason that large, adequately capitalized, well-established entities seeking to bring new investment to smaller community-based water and wastewater systems in Texas should be excluded from such incentives, which were specifically designed to encourage the investment CSWR Texas seeks to make in Texas. CSWR Texas encouraged the commission to allow "capable" entities to utilize the fair market value procedures and to take advantage of other incentives.

Commission Response

The commission declines to change the definition of selling utility as recommended by OPUC because TWC §13.305 clearly does not limit the availability of the fair market value process to acquisitions of Class C and Class D water and sewer utilities. Similarly, the commission declines to change the definition as recommended by CSWR Texas, because TWC §13.305 limits use of the fair market valuation process to acquisitions by Class A and Class B utilities.

§24.238(c)(2), List of Qualified Utility Valuation Experts

OPUC supported the utility valuation expert disclosure requirements in proposed §24.238(c)(2). However, OPUC recommended that the commission also require a utility valuation expert to provide a list of all previous water utility-related employers to provide more transparency. OPUC stated that this additional disclosure requirement would help the commission determine whether a utility valuation expert has been employed by a water utility that is subject to the fair market valuation process and whether a utility valuation expert should be disqualified from the selection process.

OPUC contended that the additional disclosure requirement would provide the commission with more context on the utility valuation expert's past water utility-related experience when considering the expert's report. OPUC argued that while a utility valuation expert may not have been employed by a water utility in the previous year to warrant disqualification under proposed §24.238(e)(2)(B), the utility valuation expert may have been employed by a water utility several years ago and that past experience could affect the expert's analysis and report. OPUC stated that while a utility valuation expert's past water utility-related experience may not warrant disqualification, the commission should nonetheless be aware of the expert's water utility-related employment history in order to make an informed decision with more transparency in the fair market valuation process.

In reply, TAWC and NAWC opposed OPUC's proposed addition to §24.238(c)(2). TAWC and NAWC commented they do not believe that disclosure is necessary, noting that OPUC stated such experience would not necessarily call for disqualification. TAWC and NAWC stated that proposed §24.238(c)(2)(E) already requires a detailed description of a utility valuation expert's experience and OPUC's proposed language seemed overly broad and vague.

In reply comments, CSWR Texas expressed its concern that there will not be a sufficient number of participating appraisers to satisfy the potential demand for the new fair market valuation process and disagreed with any requirements that will discourage or limit the ability of a willing and available appraisal expert to participate in the fair market value process. CSWR Texas stated that the rules already include restrictions on who may participate as an appraiser, and prior employment by a water utility should not be grounds for disqualification of an appraiser or cause to dismiss or question the appraiser's conclusions. CSWR Texas further commented that the commission should clarify that providing consulting services as a third party vendor does not constitute "employment" under the rule because many qualified valuation experts may have worked as an outside consultant to a utility or other "utility-related" entities such as the commission, commission staff, OPUC, municipalities, or any number of other

industry groups. CSWR Texas stated that requiring disclosure of an expert's prior work as an outside consultant could breach confidentiality agreements or otherwise discourage experts from taking part in the appraisal process. CSWR Texas opposed OPUC's proposed changes to §24.238(c)(2) and urged the commission to consider ways to encourage appraisers to participate in the fair market value process.

Commission Response

The commission declines to change the disclosure requirements as suggested by OPUC and CSWR Texas. Instead, the commission adds §24.238(e)(2)(C) to state that a utility valuation expert selected by the executive director or the executive director's designee must not have received compensation under a contract for consulting or other services with the acquiring or selling utility, or executed a contract with either utility, within one year of the date the utility valuation expert is selected. This additional language creates a clear distinction between the term "employment" as used in §24.238(e)(2)(B) and work as a third party contractor and sets reasonable parameters on when a utility valuation expert's previous work as a third party contractor poses a conflict of interest.

§24.238(d), Notice of Intent to Determine Fair Market Value

Proposed §24.238(d)(3) provides that a notice of intent to determine fair market value must not include the purchase price agreed upon by the acquiring utility and selling utility. Proposed §24.238(f)(4) provides that the appraisals performed by the utility valuation experts must not consider the purchase price negotiated by the acquiring utility and selling utility. TAWC and NAWC commented that the acquiring and selling utility should be permitted to share an agreed-upon purchase price with the utility valuation experts conducting appraisals. TAWC and NAWC stated that utility valuation experts should be able to consider all available information they believe is relevant to their appraisal task, which may include considering an established purchase price along with other available purchase price information in the market. TAWC and NAWC further stated that in light of the statutory five percent cap on compensation, the purchase price may provide an approximation of the amount the prospective utility valuation experts may be paid. TAWC and NAWC suggested revising the proposed rule to provide that the notice of intent may include the purchase price agreed upon by the acquiring utility and the selling utility.

OPUC disagreed with TAWC's and NAWC's recommendation that the acquiring and selling water utility should be permitted to share their agreed-upon purchase price with the utility valuation experts conducting the appraisals. OPUC stated that permitting the acquiring and selling utilities to share their agreed-upon purchase price with the utility valuation experts would introduce subjectivity and bias into a process that is intended to be an independent, neutral and objective evaluation of the fair market value of a selling utility or selling utility's facilities. OPUC commented that HB 3542 included several provisions that speak to the Legislature's intent to create a voluntary fair market valuation process that is independent, neutral and objective, including conflict of interest protections with regard to the utility valuation experts; selection of utility valuation experts by the commission, rather than the selling and acquiring utilities; appointment of three utility valuation experts to perform the fair market valuation appraisal; and the use of the average of the three utility valuation experts' appraisals, rather than relying upon a single appraisal, to determine fair market value. OPUC urged the commission not to allow the acquiring and selling utilities to share their agreed-upon purchase price with the utility valuation experts in the fair market valuation process.

CSWR Texas agreed with TAWC and NAWC that participating utilities should be permitted to disclose the purchase price of a system to the selected utility valuation experts for consideration as part of the fair market value process. CSWR Texas commented that there is often a lack of available cost information or market data necessary to appraise smaller water or wastewater systems and appraisers should be able to consider all available information they consider relevant to their appraisal report, including the purchase price reached by willing parties to a transaction, as long as their deliberations are consistent with the Uniform Standards of Processional Appraisal Practice. CSWR Texas further commented that by requiring the averaging of three separate appraisals, the proposed rule already has sufficient protections to ensure reasonable valuations based on all available information. CSWR Texas supported TAWC's and NAWC's proposed changes to this subsection.

Commission Response

TWC §13.305(c)(3) requires that utility valuation experts perform appraisals using certain approaches that do not include consideration of the agreed-upon purchase price. To protect the integrity of the valuation process, the commission declines to change the rule as requested by TAWC and NAWC and supported by CSWR Texas.

§24.238(e), Selection of Utility Valuation Experts

Proposed §24.238(e)(1) requires the commission's executive director to select three utility valuation experts who will perform appraisals after a notice of intent to use the fair market value process is filed. TAWC and NAWC commented that with respect to this subsection, it is helpful to consider what other jurisdictions with fair market value legislation have done regarding appraisals. TAWC and NAWC stated that they recognized the limitations of TWC §13.305(c)(2), which says the commission is to "select three utility valuation experts" from its list but stated that the statute does not prohibit recommendations from the buyer and seller regarding valuation experts that the commission should consider. TAWC and NAWC commented that it is important for the buying and selling parties to have input on the selection of the utility valuation expert because they are closest to the transaction and requested that the proposed rule be modified to require the commission's executive director or the executive director's designee to accept and consider one recommended utility valuation expert included in the list maintained under subsection (c) of this section from the acquiring utility and one from the selling utility with the notice of intent filed under subsection (d).

CLWSC requested that the rule explicitly provide that once the commission has selected the utility valuation experts, the selling and acquiring utilities are to contract with the utility valuation experts without involvement by the commission. CLWSC stated that would help all parties involved by allowing the parties to provide assurances to the appraisers about negotiation of terms.

CSWR Texas agreed with TAWC and NAWC that it is important for the buying and selling utilities to each have input as to the selection of the utility valuation experts. CSWR Texas supported TAWC's and NAWC's proposed changes to this subsection. OPUC opposed TAWC's and NAWC's proposed changes arguing that allowing the buying and selling utilities input into the selection of the utility valuation experts introduces subjectiv-

ity and bias into what is intended to be an independent, neutral, and objective process.

Commission Response

The commission declines to change the proposed rule as requested by TAWC and NAWC and supported by CSWR Texas. In developing the proposed rule, the commission reviewed the processes used by other jurisdictions, as suggested by TAWC and NAWC. TWC §13.305 places responsibility for selecting the utility valuation experts solely with the commission. Selection of the utility valuation experts by the executive director or the executive director's designee, without input from persons who have an interest in the transaction, will contribute to preserving the integrity of the fair market valuation process.

In response to CLWSC's comments, the commission modifies proposed §24.238(e)(4) to clarify that once the commission has appointed the utility valuation experts, the acquiring utility must proceed to enter agreements with the selected experts.

§24.238(f), Determination of Fair Market Value--Engineering Assessment

Proposed §24.238(f) requires the three utility valuation experts to retain a licensed engineer to assess the tangible assets of the selling utility or the facilities to be sold to the acquiring utility. TAWC and NAWC recommended that the rule allow the seller and buyer to agree to rely on an engineering assessment that one or both has already conducted as part of the due diligence process rather than have another assessment performed. TAWC and NAWC suggested that proposed §24.238(f)(1) be modified to provide that if the commission is informed by verified affidavit of either the acquiring or selling utility that an engineering assessment was previously undertaken and is in compliance with §24.238(f)(1)(A) through (C), then upon acceptance by the commission's executive director or the executive director's designee, the requirement for a new engineering assessment is waived.

In reply comments, OPUC once again stated its concern that the involvement of the selling and acquiring water utility in aspects of the fair market valuation process introduces bias and subjectivity into a process intended to be independent, neutral, and objective. OPUC maintained that the conflict of interest provisions in HB 3542 show that the utility valuation experts are supposed to be independent parties in the fair market valuation process. OPUC argued that TAWC's and NAWC's recommendation to use an engineering assessment performed during the utility's due diligence process conflicts with the intent of the legislation and should not be adopted by the commission.

Houston recognized that the avoidance of duplicative engineering work can save time and potentially reduce transactional costs passed on to ratepayers, but recommended inclusion of additional requirements to provide for verification of the assessment by the engineer if the commission modifies the proposed rule as recommended by TAWC and NAWC. Houston proposed that the engineer responsible for conducting the assessment provide an affidavit in addition to the affidavit recommended by TAWC and NAWC. Houston further recommended that the rule require the engineer to attach the engineering assessment report to the affidavit and require the report to bear the professional engineer's seal and signature to authenticate the engineering assessment as accurate and independent. Houston provided recommended amendments to the §24.238(f)(1) language proposed by TAWC and NAWC.

CSWR Texas agreed with TAWC's and NAWC's recommendation that the appraisers be permitted to utilize complete and accurate engineering studies or appraisals that have already been performed by the acquiring or selling utility. CSWR Texas expressed concerns that for smaller systems with fewer assets, the cost of fair market value appraisals could far exceed the caps imposed under the statute. CSWR Texas stated that the cost of hiring an engineer as part of the fair market value process will be a significant driver of these appraisal costs, so to the extent the buyer and seller agree to the use of such information, the commission should permit the acquiring and selling utilities to provide such information to the appraisers and allow the appraisers to determine whether such information can be reasonably substituted for an entirely new engineering analysis. CSWR Texas agreed with TAWC's and NAWC's proposed changes to this subsection.

Commission Response

TWC §13.305(c)(4) requires the three utility valuation experts selected under §13.305(c)(2) to jointly retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or the facilities to be sold. The statute does not provide for use of a previous engineering assessment. The proposed rule appropriately reflects the statutory process; therefore, no amendments are necessary.

§24.238(f), Determination of Fair Market Value--Filing of Notice of Intent and Sale, Transfer, Merger (STM) Application

CSWR Texas commented that the commission should allow the acquiring and selling utilities to file their STM applications concurrently with the fair market value appraisal process. CSWR Texas also encouraged the commission to find other ways to compress the schedule as much as possible. In addition, CSWR Texas encouraged the commission to require appraisers to complete appraisals for Class D utilities within 60 days after appointment.

Commission Response

The commission addresses the timing of filing the notice of intent and STM application in relation to proposed §24.239. The commission declines to shorten the time period for the utility valuation experts to file their reports when the selling utility is a Class D utility. The commission retains the proposed time period as an outer limit to ensure the utility valuation experts have adequate time to prepare their reports.

§24.238(f), Determination of Fair Market Value--Engineer's Role

TAWC and NAWC recommended that the rule should specifically identify the engineering "assessment" as an inventory of the assets being sold rather than any type of valuation. TAWC and NAWC suggested that proposed §24.238(f)(1)(C) be modified to specify that the engineer should develop an inventory of the used and useful utility plant assets to be transferred that is compiled by year and account, separately identify any utility plant that is being held for future use, and develop a list of all non-depreciable property such as land and rights-of-way. Further, TAWC and NAWC recommended that the rule should require that the inventory must be developed from available records, maps, work orders, debt issue closing documents funding construction projects, and other sources to ensure an accurate listing of utility plant inventory by utility account.

Houston commented that although it supports clarity regarding the engineering assessment process, TAWC's and NAWC's proposal is too narrow and inappropriately limits the role of the engi-

neer. Houston stated that it is common for the appraiser to consider both the age and condition of the asset within the subject transaction. Houston commented that the engineer conducting the engineering assessment may be the most qualified individual to assess the condition of the assets in question, and that the engineer should not be limited in providing their opinion. Houston recommended amendments to the language proposed by TAWC and NAWC.

Commission Response

The commission declines to change the proposed rule as recommended by TAWC and NAWC. The commission agrees with Houston that the recommendation inappropriately limits the role of the engineer.

§24.238(f), Determination of Fair Market Value--Consideration of Purchase Price

For the reasons discussed with respect to proposed §24.238(d)(3), which prohibits including the agreed upon purchase price in the notice of intent to determine fair market value, TAWC and NAWC requested that proposed §24.238(f)(4) be modified to provide that the appraisal may consider the purchase price negotiated by the acquiring utility and the selling utility.

CLWSC stated that the commission lacks authority to prevent selling or acquiring utilities from sharing the purchase price or the process of arriving at the purchase price with the appointed utility evaluation experts. CLWSC stated that information is an important indicator of market value, especially when appraising assets that are not widely traded, and nothing in the statute authorizes the commission to limit information flow between a utility and a utility valuation expert. CLWSC noted that the statute merely holds utility valuation experts to the Uniform Standards of Professional Appraisal Practice and dictates the methods of valuation each expert is to employ. CLWSC took issue with the assumption that an appraisal will fail to be independent if the utility valuation expert receives information from the selling or acquiring utilities about the facilities in question. CLWSC further commented that the statute does not call for an "independent" appraisal, but reads "...each utility valuation expert shall perform an appraisal in compliance with Uniform Standards of Professional Appraisal Practice, employing the cost, market, and income approaches, to determine the fair market value...."

Commission Response

The commission declines to make changes to the proposed rule. TWC §13.305 provides an alternative, voluntary method for determining the appropriate rate base value for an acquired retail public utility or facilities. The statute does not expressly address the flow of information between the utility valuation experts and the acquiring and selling utility. Further, it does not expressly prohibit the commission from enacting rules to ensure that the information shared does not jeopardize the independence of the utility valuation experts and their appraisals. Although TWC §13.305 does not use the word "independent," it is reasonable to require that the appraisals provided by the utility valuation experts not be influenced by the agreed-upon purchase price or the methodologies or process used to arrive at the purchase price. The commission modifies §24.238(f)(4) to further clarify what information must not be considered by the utility valuation expert.

§24.238(f), Determination of Fair Market Value--Engineer's Fee

TAWC and NAWC stated that the proposed rule is unclear whether the fee for the engineer retained by the three selected utility valuation experts described in proposed §24.238(f)(1)(D) is subject to the same fee limitations expressed in subsection (k). TAWC and NAWC suggested additions to subsection (k) intended to clarify this issue.

Commission Response

The commission declines to make changes to the rule in response to TAWC's and NAWC's comments. TWC §13.305(e) specifically refers to fees paid to utility valuation experts. Because the utility valuation experts will retain and compensate the engineer, proposed §24.238(f)(2)(D) provides that the engineer's fee may be included in the utility valuation expert's compensation under subsection (k). Therefore, under the proposed rule, the engineer's fee is indirectly subject to the five percent cap, and no changes are necessary.

§24.238(f), Determination of Fair Market Value--Information Used by Utility Valuation Expert

TAWC and NAWC asked the commission to specify that the utility valuation experts and engineer should confer with the acquiring utility and selling utility to obtain available valuation and asset information as part of the fair market valuation determination process. TAWC and NAWC stated that ultimately the utility valuation experts will prepare their appraisal reports independently, but it is important for the best information available to be considered. TAWC and NAWC stated that most often, the acquiring and selling utilities will have that information, so the utility valuation experts should be compelled to request and consider information from the acquiring and selling utilities to the extent it is available.

Commission Response

The rule as proposed does not preclude the utility valuation experts from communicating with the selling and acquiring utilities to obtain information needed to perform the cost, market, and income analyses. However, the commission declines to expressly require that they do so.

§24.238(g) through (i), Cost Approach, Income Approach, and Market Approach

CSWR Texas commented that the requirements for the three valuation methodologies exceed the statutory requirements because TWC §13.305 does not prescribe any specific methodologies or requirements for the cost approach, income approach and market approach. Rather, it only requires the utility valuation experts to comply with the Uniform Standards of Professional Appraisal Practice. CSWR Texas stated that the proposed rule's appraisal process may be appropriate for larger, more sophisticated systems with adequate records, but it would be "inefficient or ineffective" for appraising smaller systems that lack data or comparable sales. CSWR Texas noted that the proposed rule does not appear to allow the utility valuation experts any discretion to apply their individual and specialized expertise to determine the most appropriate manner to determine fair market value. CSWR Texas was also concerned that the requirements on how appraisals must be performed could conflict with the Uniform Standards of Professional Appraisal Practice, with which the utility valuation experts are required to comply under TWC §13.305(c)(3), proposed §24.238(f)(2), their state licensing requirements, and the industry's ethical standards. Such a conflict could discourage utility valuation experts from participating in the fair market value process. To resolve these concerns,

CSWR Texas encouraged the commission to include language in subsections (g), (h) and (i) that allows the utility valuation experts to use "other reasonable methodologies that are consistent with the Uniform Standards of Professional Appraisal Practice" to perform each of the three approaches. In addition, CSWR Texas recommended that the commission clarify that an appraiser has discretion to use only those appraisal analyses the appraiser determines will result in reasonable or accurate valuations. According to CSWR Texas, allowing use of discretion is consistent with the Uniform Standards of Professional Appraisal Practice, would result in more accurate valuations, and would eliminate the time and expense of performing unnecessary or ineffective analyses.

Proposed §24.238(g)(1) states that a cost approach appraisal performed must be based on the investment required to replace or reproduce future service capability or the original cost of the facilities. TAWC and NAWC commented that there are other cost approach valuation methods that could potentially be utilized and paragraph (g)(1) should be revised to permit a cost appraisal to be based on other reasonable cost approach valuation methods in addition to those listed in the proposed rule.

Commission Response

TWC §13.305(c)(3) requires the utility valuation experts to perform appraisals using the cost, market, and income approaches. The proposed rule appropriately incorporates the statutory requirements; therefore, the commission declines to change the rule as recommended by CSWR Texas. The commission also declines to allow use of other cost approach valuation methods. Original cost and replacement cost are generally accepted methods for determining the value of facilities and are sufficient for the purposes of the fair market valuation process.

§24.238(h), Income Approach

Proposed §24.238(h)(2) provides that an appraisal that uses the income approach must exclude consideration of future capital improvements. TAWC and NAWC commented that future capital improvements are used in the development of the discounted cash flow method and excluding consideration of them will artificially increase the overall income approach value. TAWC and NAWC stated that proposed §24.238(h)(2) should be deleted.

Commission Response

The commission declines to delete or change §24.238(h)(2) because consideration of future capital improvements unnecessarily introduces additional uncertainty and inaccuracy into the income method.

§24.238(j), Contents of Utility Valuation Expert Report

OPUC supported the commission's inclusion of the conflict of interest provisions for engineers in subparagraph (f)(1)(A) of the proposed rule. Additionally, OPUC supported the required information sharing between the engineer and utility valuation expert in proposed §24.238(f)(1)(B). OPUC, however, noted that the engineer's information is shared with only the utility valuation experts and the utility valuation experts are not obligated to disclose the engineer's information in their reports. OPUC commented that transparency and holistic commission oversight are essential to the new fair market valuation process, and the engineer's information is just as important as the utility valuation expert's information for purposes of ensuring a non-biased valuation of a retail public utility or the facilities of a retail public utility. OPUC recommended that the commission modify proposed §24.238(j) to require the disclosure of information provided by the engineer to the utility valuation expert pursuant to §23.238(f)(1)(B) in the utility valuation expert's report.

In reply comments, TAWC and NAWC stated that OPUC's proposed addition to §24.238(j) that would require inclusion in the utility valuation expert's report of "the information submitted by the licensed engineer under subsection (f)(1)(B) to the utility valuation expert" may not be necessary given that proposed §24.238(j)(3) requires the utility valuation expert's report include "a detailed list of the utility plant assessed by the engineer."

Commission Response

In response to OPUC's comments, the commission modifies §24.238(j)(3) to require that the utility valuation expert's report must include the assessment prepared by the licensed engineer under §24.238(f)(1), including a detailed list of the utility plant assessed by the engineer.

§24.238(k), Transaction and Closing Costs

TAWC and NAWC expressed concern that proposed §24.238(k), which allows a fee paid to a utility valuation expert to be included in the transaction and closing costs associated with an STM, leaves open for future determination in a rate case the amount of transaction and closing costs, the acquiring utility may recover in rates. TAWC and NAWC stated that they think the intent of the statute is that the five percent cap should represent a total amount for all appraisal work and engineer fees. Further, TAWC and NAWC requested the commission not leave to a future case the determination of whether a fee amount other than the five percent will be approved. TAWC and NAWC noted that TWC §13.305(g) and (h)(3) require ratemaking rate base to be established for incorporation into the acquiring utility's rate base in its next rate case and be included in the STM application for the transaction, but TWC §13.305(h)(4) specifies that transaction and closing costs to be included in the acquiring utility's rate base are to be included in a fair market value STM application. TAWC and NAWC offered revisions to proposed §24.238(k)(2) that would require the commission to approve the collective fee amounts as part of the fair market value determination proceeding.

CSWR Texas commented that the actual costs for the utility valuation experts to perform appraisals could be significantly higher than five percent of the purchase price. For example, for a smaller system with a fair market value of $100,000, the appraisal and engineering fees would likely far exceed the five percent cap. CSWR Texas stated that it agrees reasonable caps should be placed on appraisal costs, but it will be difficult to find appraisers willing to engage in this process and hire outside engineers to assess these much smaller systems if their costs are not recoverable. The fact that the statutorily mandated caps may not allow valuations of these smaller systems supports adoption of more expedient and cost-effective alternatives to the proposed fair market valuation approach.

CLWSC commented that the five percent cap should apply to the combined fees paid to all three appraisers, and that the rule could state that combined fees of up to five percent is the maximum that may be recovered in rates, while allowing the acquiring utility to agree to whatever fees they negotiate with the appraisers. CLWSC stated this approach would allow the appraisers to be assured of a fee that they deem to be acceptable, but it would create a limit more in line with market conditions on how much of those fees could be expected to be passed on to ratepayers.

With respect to the appraisal fee referenced in TWC §13.305(e)(2), CLWSC advocated for a published fee schedule to be promulgated by the commission to create clarity and certainty in the fair market value determination process. The fee schedule would not be a requirement for what utilities must pay an appraiser, but rather would aid utilities in understanding what costs are recoverable once the utility has completed the fair market value determination process and proceeded with its STM application.

In reply comments, OPUC agreed with the concerns raised by TAWC, NAWC, and CLWSC relating to the five percent cap on fee amounts included in transaction and closing costs that are recoverable in rates. Although TWC §13.305(e) sets a five percent cap for recovery of utility valuation expert fees, TWC § 13.305(e) does not specify whether the five percent cap applies collectively or individually to the utility valuation expert and licensed engineer fees. OPUC agreed that the suggested language revisions to §24.238(k) proposed by TAWC and NAWC are consistent with the legislative intent of HB 3542 and that the five percent cap should apply collectively to the utility valuation expert and licensed engineer fees. OPUC stressed that the revised language proposed by TAWC and NAWC allows flexibility for the selling and acquiring water utility to negotiate a higher contractual price for the services of the utility valuation expert and licensed engineer, but limits the costs passed on to ratepayers.

Houston replied to TAWC's and NAWC's concern that transaction and closing costs associated with the fair market value process will not be considered by the commission until the rate case in which the fees are requested for recovery. Houston noted that as support for including transaction and closing costs in the fair market valuation process, TAWC and NAWC refer to the requirements of TWC §13.305(h)(4) that the STM application must include the transaction and closing costs incurred by the acquiring utility that will be included in the utility's rate base. Houston agreed that if the transaction and closing costs are to be included in rate base through the fair market valuation process in accordance with the proposed language in §24.41(c)(2)(A), then it does follow that the fair market valuation process would need to include consideration of these costs.

Houston expressed concern that considering these costs as part of the fair market valuation would circumvent the typical ratemaking process and effectively deny ratepayers the opportunity to comment on the reasonableness and necessity of these costs. Houston further commented that if included, the costs would continue to be a component of the fair market value rate base until depreciated over the life of the plant assets without having had the same scrutiny that is afforded affected parties in general rate proceedings. Houston noted that the use of system-wide or region-wide rates by Class A and B utilities complicates the situation. Houston stated it would need to intervene in all STM filings that could potentially result in a change in rate base underlying the rates charged to customers within its municipal limits to ensure adequate protection to ratepayers within Houston's original jurisdiction. Houston expressed uncertainty about whether it would have standing to intervene in such proceedings. Houston stated that, should intervention be granted, it could further complicate and delay the STM process, which could further hamper and delay much needed improvements in service to customers.

Houston agreed with TAWC and NAWC that the proposed rules appear to create confusion on when the transaction and closing costs associated with fair market value determination would be calculated and approved. However, Houston stated that the STM should not be conflated with the ratemaking processes and strongly urged the commission to ensure that ratepayers maintain the ability to comment on the reasonableness and necessity of the transaction and closing costs within the standard ratemaking process as opposed to including it within the fair market valuation or STM process.

Commission Response

The statutory framework for the fair market value process requires the commission to establish the ratemaking rate base in the STM proceeding. The commission's role in establishing the ratemaking rate base is not adjudicatory. No hearing on the issue will be required or permitted because the ratemaking rate base must be based on the utility valuation experts' reports or the purchase price. In contrast, determination by the commission of reasonable and necessary transaction and closing costs, including utility valuation expert fees, to be recovered in rates will be an adjudicatory process that may require a hearing. The proposed definition of ratemaking rate base in §24.238(b)(4) clarifies that transaction and closing costs are not part of ratemaking rate base, and therefore, are not required by TWC §13.305 to be determined in the STM case. The commission does not determine in the STM case the amount of transaction and closing costs properly included in rates.

The commission agrees with the commenters that the five percent cap should apply to the overall amount of utility valuation expert fees, including the engineer's fee, that may be recovered through rates and clarifies §24.238(e)(4) accordingly. The commission also has the authority under TWC §13.305(e)(2) to approve a different amount. The acquiring and selling utilities will negotiate the fees of the utility valuation experts, and as with other costs incurred by utilities, bear the risk of a commission finding that the fees are not reasonable, necessary, or recoverable through rates. The determination of the amount of transaction and closing costs that may be included in rates is properly carried out in a rate case where affected persons such as Houston, OPUC, and utility customers may intervene.

The commission declines to adopt a fee schedule as suggested by CLWSC because the reasonableness of the closing costs, including the utility valuation experts' fees, is appropriately decided on a case-by-case basis.

The commission declines to make changes to the proposed rule in response to CSWR's comments. The proposed rules implement HB 3542 and make corresponding changes to existing rules. Changing the proposed §24.238 to provide for more expedient and cost-effective alternatives to the fair market value approach is beyond the scope of this project and the authority granted in HB 3542. The rule precludes rate recovery of amounts for utility valuation expert fees that exceed the five percent cap, but does not prevent utilities from paying utility valuation experts fees that exceed that cap.

§24.239 Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental--Timing of Fair Market Valuation and STM Application

TAWC and NAWC expressed concern about the extended length of time it could take to complete an acquisition using the §24.238 fair market valuation process if the STM application could not be filed until after the valuation was determined by the commission.

TAWC and NAWC stated that the commission's determination of the appropriate fair market valuation and approval of a transaction itself under §24.239 should occur at the same time and in

the same proceeding. TAWC and NAWC stated that until valuation is settled, the buyer will not know if it can earn a return of and on capital used to acquire the property of the seller such that an STM cannot be consummated until after the fair market valuation is pronounced by the commission. TAWC and NAWC recommended that this determination should occur as promptly and efficiently as possible. TAWC and NAWC stated that customers and employees also benefit from the STM proceeding not lingering too long becaduse existing management may be less likely to approve capital improvements and make other decisions that would benefit service during the pendency of a sale of the system, while employees will be operating under the uncertainty of their continuing positions with the new owner. TAWC and NAWC cited TWC §13.305(h) as indicative of clear legislative intent to consider the asset acquisition and its proper valuation in the same proceeding. TAWC and NAWC recommended that the commission should also recognize TWC §13.305(i), which specifies that the commission's order approving the acquisition must determine the acquiring company's ratemaking rate base. TAWC and NAWC commented that TWC §13.305(h)(4) also requires inclusion of the "transaction and closing costs incurred by the acquiring utility that will be included in the utility's rate base." TAWC and NAWC proposed that the commission replace proposed §24.239(d)(2) with language that would require approval of transaction and closing costs in the STM proceeding rather than deferring consideration to the next rate case.

CSWR Texas encouraged the commission to include language in proposed §24.239(d) that would allow an entity to file its STM application concurrently with its fair market value appraisal and to supplement the application to include the appraiser reports and costs once the fair market valuation is finalized. This would expedite the acquisition time by four to five months, increase regulatory certainty, and reduce costs.

In reply comments, CSWR Texas agreed with TAWC and NAWC that the commission should include language in the rule that allows a utility to engage in the fair market value process and file its STM concurrently. CSWR Texas noted that an STM proceeding can already take over a year, and the fair market valuation process could add an additional five to six months.

Commission Response

The commission disagrees that concurrent filing of the notice of intent to use the fair market value process and the associated STM application will result in the efficiencies projected by TAWC, NAWC, and CSWR Texas. TWC §13.305 clearly contemplates a two-step process. TWC §13.305(c) requires the acquiring utility and selling utility to notify the commission of their intent to use the fair market valuation process so that the commission may select the utility valuation experts. TWC §13.305(h) requires an acquiring utility that uses the fair market valuation process to submit copies of the three utility valuation expert appraisals in the STM application submitted under TWC §13.301. The commission cannot set an intervention date, provide for notice, determine whether a hearing is necessary, or evaluate the merits of the STM application without a complete application.

Further, the fair market valuation process is voluntary and any concerns about the additional time required to complete this process before filing an STM application can be weighed against the benefits of obtaining a fair market valuation before filing a notice of intent initiating the process. Therefore, the commission adopts the rule as proposed.

§24.239 Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental--Ability to Contest Appraisals

TAWC and NAWC requested that parties to an STM proceeding have the opportunity to contest a fair market valuation based upon the existence of fact and mathematical errors in the appraisals or engineer's assessment. TAWC and NAWC stated that there is no indication that the legislature intended to eliminate the commission's ability to analyze and challenge the appraisals and the resulting rate base value. TAWC and NAWC commented that the appraisal process involves facts and assumptions that may be incorrect and in need of revision; the process is not simply the mathematical exercise of taking three appraisals without inquiry and dividing the sum of them by three. Rather, TAWC and NAWC stated that the commission has a statutory duty to assure the public interest and compliance with the TWC and commission rules.

TAWC and NAWC suggested adding a new paragraph to §24.239(d)(3) that provides that parties to an application proceeding that includes a fair market valuation may challenge the facts and assumptions made in an appraisal or engineering assessment relied upon in an appraisal.

CSWR Texas agreed with TAWC and NAWC that there should be a process to allow parties to identify and correct mathematical errors or underlying data in the appraisal reports or engineer analyses. While TAWC and NAWC recommended including language in §24.239 to address this within the context of an STM proceeding, CSWR Texas suggested allowing the utilities to communicate any errors to the appraisers once their reports are issued and allowing the appraisers to issue a corrected report within a reasonable amount of time. Allowing for correction of errors will improve the fair market valuation process and protect both the utility and customers.

In reply comments, OPUC expressed concern that including language in the proposed rule that permits challenges to the facts and assumptions of an appraisal or engineering assessment in the fair market valuation process will create an opportunity for parties to modify the results of the appraisal and engineering assessment and could result in unnecessary litigation that will negate the intended legislative purpose of incentivizing private investment in water and wastewater infrastructure in smaller communities that are in critical need of the infrastructure. OPUC recognized the validity of the concern raised by TAWC and NAWC, but stated that their proposed language exceeds the scope of their concern. OPUC provided language for a proposed new subsection if the commission wants to address TAWC's and NAWC's concern that allows for the opportunity to "correct factual and mathematical errors" rather than the opportunity to "challenge the facts and assumptions made."

Commission Response

The commission disagrees with TAWC and NAWC regarding the legislature's intention to eliminate the commission's ability to analyze and challenge the appraisals and the resulting rate base value. TWC §13.305(g) states that the ratemaking rate base is the lesser of the purchase price or the fair market value. TWC §13.305(f) states that the fair market value is the average of the three utility valuation experts appraisals.

However, factual or mathematical errors could be present in an appraisal report prepared by a utility valuation expert. Therefore, the commission modifies §24.238(f)(5) to require the acquiring and selling utilities to review the reports for mathematical and factual errors and notify the utility valuation experts of any math-

ematical or factual errors they identify, regardless of whether the errors increase or decrease the appraisal. The utility valuation expert may promptly revise the report in response to the utilities' notification. This change builds the review into the fair market valuation process before the adoption of a ratemaking rate base rather than waiting until the STM proceeding, which occurs after the ratemaking rate base is set.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other modifications for the purpose of clarifying its intent.

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.41

Statutory Authority

This repeal is adopted under the Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §13.041 and §13.305.

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 July 31, 2020.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 20, 2020
Proposal publication date: May 1, 2020
For further information, please call: (512) 936-7244

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16 TAC §24.41

Statutory Authority

This new rule is adopted under the Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §13.041 and §13.305.

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 H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.238, 24.239, 24.243

Statutory Authority

The new rule and rule amendments are adopted under the Texas Water Code §13.041, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §13.305, which establishes a voluntary process for the valuation of utilities or facilities acquired by Class A or Class B utilities.

Cross reference to statutes: Texas Water Code §13.041 and §13.305.

§24.238. Fair Market Valuation.

(a) Applicability. This section applies to a voluntary arm's length transaction between an acquiring utility and a retail public utility under TWC §13.305 for which approval is required under TWC §13.301. This section does not apply to a transaction between a utility and its affiliate.

(b) Definitions. In this section, the following words and terms have the following meanings, unless the context indicates otherwise.

(1) Acquiring utility -- A Class A or Class B utility that is acquiring a selling utility, or the facilities of a selling utility.

(2) Allowance for funds used during construction (AFUDC) -- An accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance a transferee's construction costs of an improvement to a purchased asset.

(3) Fair market value -- The average of the three appraisals conducted under subsection (f) of this section.

(4) Ratemaking rate base -- The dollar value of the selling utility or the sold facilities of a selling utility that is incorporated into the rate base of the acquiring utility for post-acquisition purposes. The ratemaking rate base is the lesser of the purchase price negotiated by an acquiring utility and a selling utility or the fair market value. The ratemaking rate base does not include transaction and closing costs.

(5) Selling utility -- A retail public utility that is being purchased by an acquiring utility or is selling facilities to an acquiring utility.

(c) List of qualified utility valuation experts. The commission will maintain a list of qualified utility valuation experts to perform appraisals to determine a fair market value of a selling utility or facilities of a selling utility.

(1) A utility valuation expert may request to be included on the commission's list by submitting, under the control number designated for that purpose, the required information.

(2) The request filed by the utility valuation expert must include:

(A) The expert's name, mailing address, telephone number, and email address;

(B) The name of the company with which the expert is employed or associated, or the name under which the expert conducts business;

(C) The names of the principal officers of the company with which the expert is employed or associated, if applicable;

(D) The name and mailing addresses of any affiliates of the company with which the expert is employed or associated, if applicable; and

(E) A detailed description of the utility valuation expert's qualifications, such as professional licensing, certifications, training or past experience conducting economic evaluations of water and sewer utilities.

(3) The utility valuation expert must update the information in its request on file with the commission within ten business days of a material change to the information.

(4) A utility valuation expert who wishes to be removed from the list maintained by the commission under this subsection must file a letter with the commission requesting to be removed from the list. This letter must be filed under the control number designated for that purpose. The commission will acknowledge the removal request in writing.

(d) Notice of intent to determine fair market value.

(1) A selling utility and an acquiring utility that agree to use the fair market valuation process described in subsection (f) of this section must file a notice of intent to determine fair market value in the control number designated for that purpose.

(2) The notice of intent must include the following:

(A) The name and certificate of convenience and necessity (CCN) number of the acquiring utility. If the acquiring utility holds multiple CCN numbers, the acquiring utility must provide all the CCN numbers.

(B) The name and contact information of the acquiring utility's representative.

(C) The number of connections served by the acquiring utility.

(D) The name and CCN number of the selling utility.

(E) The name and contact information of the selling utility's representative.

(F) The number of connections served by the selling utility.

(G) The estimated closing date of the planned acquisition.

(H) A list of the utility valuation experts on the commission's list of qualified experts who, as of the date of the notice of intent, are precluded under subsection (e)(2)(B) of this section from performing an appraisal of the transaction.

(3) The notice of intent must not include the purchase price agreed upon by the acquiring utility and the selling utility.

(e) Selection of utility valuation experts.

(1) The commission's executive director or the executive director's designee will select three utility valuation experts from the list maintained under subsection (c) of this section no later than 30 days after the filing of a notice of intent to determine fair market value that meets the requirements of subsection (d) of this section.

(2) The utility valuation experts selected under paragraph (1) of this subsection may not:

(A) derive material or financial benefit from the sale other than fees for services rendered;

(B) be or have been within the year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility; or

(C) have received compensation under a contract for consulting or other services with the acquiring or selling utility, or executed a contract for consulting or other services with the acquiring or selling utility, within the year preceding the date the utility valuation expert is selected.

(3) The commission's executive director or the executive director's designee will base the selection of utility valuation experts on the following:

(A) Qualifications of the utility valuation expert.

(B) Availability of the utility valuation expert during the required time frame.

(C) Absence of conflicts of interest described in paragraph (2) of this subsection.

(D) Other factors relevant to a utility valuation expert's ability to perform an appraisal under this section.

(4) The acquiring utility must contract directly with the selected utility valuation experts and the commission will not be a party to the contract. Subsection (k)(2) of this section, which limits the amount of transaction and closing costs that may be recovered in rates, does not apply to the fees for service agreed to in the contract. If the acquiring utility and any of the utility valuation experts selected under subsection (e)(1) of this subsection are unable to reach agreement on the terms and conditions for performing the appraisal, including the amount of the service fee, the acquiring utility or utility valuation expert may submit a request for selection of a different utility valuation expert under the control number designated for that purpose. If the commission's executive director or the executive director's designee selects a different utility valuation expert, the time period for all utility valuation expert to submit a report under subsection (f)(5) of this section begins when the different utility valuation expert is selected.

(f) Determination of fair market value.

(1) The three utility valuation experts selected under subsection (e) of this section jointly must retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility or the facilities to be sold to the acquiring utility.

(A) The engineer may not be or have been within one year preceding the date the service contract is executed a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(B) The engineer must provide the following information to the valuation experts:

(i) Qualifications that demonstrate the engineer's ability to provide the requested assessment;

(ii) The engineer's fees for other similar assessments; and

(iii) Other relevant information requested by the utility valuation experts.

(C) The engineer's assessment must include a separate assessment for each type of facility based on the applicable National Association of Regulatory Utility Commissioners (NARUC) account for the facility.

(D) The fee charged by the engineer must be shared and paid equally by the three utility valuation experts and may be included as part of the utility valuation expert compensation under subsection (k) of this section.

(2) Each utility valuation expert must perform an independent appraisal of the selling utility, including the valuation of intangible assets as appropriate, in compliance with Uniform Standards of Professional Appraisal Practice, using the cost, market, and income approaches in accordance with subsections (g) - (i) of this section.

(3) The appraisal must not take into account the original sources of funding, including developer contributions or customer contributions in aid of construction, for any of the utility plant that is assessed by the engineer or the utility valuation experts.

(4) The appraisal must not take into account the purchase price negotiated by the acquiring utility and the selling utility or methodologies or process used to arrive at the purchase price.

(5) Each utility valuation expert must submit a completed report to the acquiring utility and the selling utility no later than 120 days after the date the commission's executive director or the executive director's designee selects the utility valuation expert under subsection (e) of this section. Before the submission of the report, the acquiring and selling utilities must review the report for mathematical and factual errors, and notify the utility valuation expert of any mathematical any factual errors they identify. The utility valuation expert may promptly revise the report in response to the utilities' notification.

(6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction. Nothing in this section alters the requirements for multiple system consolidation in §24.25(k) of this title, relating to Form and Filing of Tariffs.

(g) Cost approach.

(1) A cost approach appraisal performed under this section must be based on one of the following:

(A) the investment required to replace or reproduce future service capability; or

(B) the original cost of the facilities as adjusted for depreciation.

(2) A cost approach appraisal performed under this section must:

(A) incorporate the results of the assessment performed by the engineer selected under subsection (f)(1) of this section;

(B) exclude from consideration overhead costs, future improvements, and going concern value; and

(C) use a consistent rate of inflation for all classes of assets unless use of different rates is reasonably justified.

(h) Income approach.

(1) An income approach appraisal performed under this section must be based on one of the following:

(A) capitalization of earnings or cash flow; or

(B) the discounted cash flow method.

(2) An income approach appraisal performed under this section must exclude consideration of the following:

(A) going concern value;

(B) future capital improvements; and

(C) erosion of cash flow or erosion on return.

(3) An income approach appraisal performed under this section must be supported by the following:

(A) an explanation of how the capitalization rate was calculated, if a capitalization rate was used;

(B) an explanation of the basis for the discount rates used; and

(C) an explanation of the capital structure, cost of equity and cost of debt used.

(i) Market approach.

(1) A market approach appraisal performed under this section must be based on the following:

(A) the current connection count of the selling utility at the time of the appraisal;

(B) use of a proxy group that includes companies that have made acquisitions that were not based on a fair market valuation methodology; or

(C) comparable sales that did not include the value of future capital improvement projects in the selling price.

(2) A market approach appraisal performed under this section must not consider the following:

(A) a net book financials multiplier or speculative growth adjustments;

(B) the value of future capital improvement projects; or

(C) a value or adjustment for the goodwill of the selling utility.

(j) Contents of utility valuation expert report. A report submitted under paragraph (f)(5) of this section must include:

(1) a copy of the service contract executed by the utility valuation expert and the acquiring and selling utilities;

(2) the fee charged by the utility valuation expert along with documentation supporting the amount of the fee;

(3) a copy of the engineer's report, including a detailed list of the utility plant assessed by the engineer;

(4) an explanation of how the cost, market, and income approaches were incorporated into the calculation of the fair market value of the selling utility or the selling utility's facilities; and

(5) a notarized affidavit stating that:

(A) the appraisals described in the report were conducted in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice;

(B) the utility valuation expert will not derive material or financial benefit from the sale other than the fee for services rendered;

(C) the utility valuation expert is not currently and was not within the year preceding the date of the contract for service executed between the utility valuation expert and the acquiring and selling utilities, a director, officer, or employee of the acquiring utility or the selling utility or an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility; and

(D) the utility valuation expert did not receive compensation under a contract for consulting or other services with the acquiring utility or selling utility, or execute a contract for consulting or other services with the acquiring or selling utility, within the year preceding the date the utility valuation expert was selected to perform the appraisal that is the subject of the report.

(k) Transaction and closing costs.

(1) A fee paid to a utility valuation expert to perform an appraisal under subsection (f) of this section may be included in the transaction and closing costs associated with a transaction approved under §24.239 of this title, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease or Rental.

(2) The commission will review the transaction and closing costs, including fees paid to utility valuation experts, in the rate case in which the acquiring utility requests rate recovery of those costs. The fee amounts included in transaction and closing costs that are recoverable in the acquiring utility's rates may not exceed the lesser of:

(A) five percent of the fair market value; or

(B) the fee amounts approved by the commission in the rate case in which the acquiring utility requests rate recovery of the transaction and closing costs.

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 July 31, 2020.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7244

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 35. ENFORCEMENT

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

16 TAC §35.7

The Texas Alcoholic Beverage Commission adopts new 16 TAC §35.7 without changes to the proposed text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3717). The rule will not be republished.

In 2019, the 86th Texas Legislature passed Senate Bill 1450 which amended the Alcoholic Beverage Code to allow holders of certain mixed beverage permits to deliver alcohol to off-premise locations along with food orders. The bill also created the consumer delivery permit, which authorizes its holders to employ or contract with delivery drivers to deliver alcoholic beverages from retail locations to consumers (new Tex. Alco. Bev. Code Ch. 57).

The legislature provided that a consumer delivery permit holder may use a software application in deliveries of alcohol to the consumer to qualify for certain limitations on liability under the new consumer delivery permit. It directed the TABC to adopt minimum standards for such software applications (Tex. Alco. Bev. Code §57.09(a)(2)). New rule §35.7 provides the minimum standards for alcohol delivery compliance software applications, including features designed to ensure that alcoholic beverages are not delivered to persons who are intoxicated or under the age of 21 and ascertain whether a particular type of alcoholic beverage can be delivered legally to the consumer's address (wet/dry status). An applicant or permit holder may request an evaluation of its software application from the TABC, which will provide an opinion as to its compliance with the requirements of the rule; however, pre-approval is not required.

No comments were received.

The new rule is authorized by Alcoholic Beverage Code §57.09(a)(2), which requires the Texas Alcoholic Beverage Commission (commission) to establish minimum requirements for alcoholic beverage delivery software applications.

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 July 30, 2020.

TRD-202003093
Shana Horton
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Texas Alcoholic Beverage Commission
Effective date: August 19, 2020
Proposal publication date: June 5, 2020
For further information, please call: (512) 206-3451

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

19 TAC §74.1003

The Texas Education Agency (TEA) adopts an amendment to §74.1003, concerning commissioner's rules on college and career readiness. The amendment is adopted without changes to the proposed text as published in the February 14, 2020 issue of the *Texas Register* (45 TexReg 988) and will not be republished. The adopted amendment specifies that, beginning in the

2019-2020 school year, the list of industry-based certifications to be used for public school accountability will be provided in the annually adopted accountability manual.

REASONED JUSTIFICATION: Section 74.1003 defines the list of industry-based certifications that are recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system.

The list included as a figure in subsection (a) applied to the 2017-2018 school year. The adopted amendment specifies that the figure in subsection (a) also applies to the 2018-2019 school year.

An updated list of recognized industry certifications has been approved by the commissioner of education for implementation in the 2019-2020 academic year. The adopted amendment adds a new subsection (b) to state that, beginning in the 2019-2020 school year, the list of approved industry-based certifications affecting public school accountability will be provided in the accountability manual adopted annually in 19 TAC §97.1001, Accountability Rating System.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 14, 2020, and ended March 16, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas School Alliance (TSA) and an educator expressed support for including the industry-based certification list in the annually adopted accountability manual.

Response: The agency agrees that it is beneficial for the industry-based certification list to be included in the annually adopted accountability manual.

Comment: An individual recommended adding specific industry certifications not already included on the list of industry-based certifications.

Response: This comment is outside the scope of the proposed rulemaking. Industry-based certifications must be approved through an evaluation process conducted biennially.

Comment: An educator recommended adding specific industry certifications not already included on the list of industry-based certifications.

Response: This comment is outside the scope of the proposed rulemaking. Industry-based certifications must be approved through an evaluation process conducted biennially.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §39.053, which requires the commissioner to adopt a set of indicators of the quality of learning and achievement.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.053.

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 August 3, 2020.

TRD-202003132

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Texas Education Agency
Effective date: August 23, 2020
Proposal publication date: February 14, 2020
For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 21, 2020 adopted amendments to §§57.973, 57.981, 57.992, 57.993, and 57.997, concerning the Statewide Recreational and Commercial Fishing Proclamations. Section 57.981 and §57.992 are adopted with changes to the proposed text as proposed in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1171). The rules will be republished. Sections 57.973, 57.993, and 57.997 are adopted without changes to the proposed text and will not be republished.

The change to §57.981, concerning Bag, Possession, and Length Limits for recreational fishing, and §57.992, Bag, Possession, and Length Limits for commercial fishing, implement a delayed effective date for provisions affecting both the recreational and commercial flounder fishery. The department proposed a closed season for all take of flounder from November 1 through December 14, to take effect September 1, 2020. The commission adopted the proposed rules but deferred effectiveness until September 1, 2021.

The amendment to §57.973, concerning Devices, Means and Methods adds a section of Brushy Creek (Williamson County) to the list of locations where game and non-game fishes can only be taken by pole and line and would limit anglers to the use of no more than two pole-and-line devices at the same time. The stream segment affected by the proposed amendment is from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line (approximately 50 miles). Brushy Creek Reservoir currently is subject to this regulation. A survey of anglers who use both the reservoir and creek waters determined that both waters are heavily used, and some anglers fished both in one day. The amendment standardizes regulations on the reservoir and the creek downstream, which should simplify compliance and enforcement. Additionally, the cities surrounding these water bodies recently have experienced rapid population growth and restriction of harvest methods to pole and line would serve to limit the harvest of some fishes such as sunfish, which could benefit the overall fish community and the angling experience.

The amendment to §57.981, concerning Bag, Possession and Length Limits, implements changes to harvest regulations for largemouth bass, crappie, and catfish on multiple locations.

The amendment to §57.981 modifies harvest regulations for largemouth bass on Moss Lake (Cooke County), replacing the current regulation (14-inch minimum length limit and five-fish daily bag limit) with a 16-inch maximum length limit and providing an exception for temporary possession of bass 24 inches or greater for possible submission to the department's Share-Lunker program. Moss Lake is a 1,140-acre impoundment located in near Gainesville. The bass fishery at the reservoir currently consists of largemouth and spotted bass, but angler creel surveys indicate largemouth bass are the most sought-after species. While bass are relatively abundant in the reservoir, electrofishing surveys indicate that very few legal-size (14 inches) largemouth bass are present in the population. Although surveys indicate few legal-size largemouth bass, the reservoir does support some large bass, with a few exceeding eight pounds. Spotted bass are abundant, with few exceeding 14 inches in length and samples consist mostly of fish less than 12 inches in length. Spotted bass compete with largemouth bass for forage and contribute to an overabundance of bass less than 12 inches in length. Implementation of a 16-inch maximum length limit on largemouth bass would allow anglers to harvest the abundant smaller fish that potentially could be causing fewer bass to reach larger sizes. Since some anglers have difficulty in distinguishing spotted bass from largemouth bass, opening harvest to all small bass will allow anglers to harvest both species without differentiation.

The amendment to §57.981 also modifies harvest regulations for largemouth bass on Brushy Creek Reservoir and blue and channel catfish in the section of Brushy Creek (both in Williamson County) mentioned previously in this rulemaking. Harvest of largemouth bass in the reservoir is low. The current 18-inch minimum length limit is not benefitting the bass population and implementation of a 14-inch minimum length limit will have little impact. As noted previously in this rulemaking with respect to proposed changes to device restrictions, the standardization of regulations between the reservoir and Brushy Creek will enhance compliance and enforcement.

Additionally, the amendment replaces the current harvest regulations for blue and channel catfish for Brushy Creek Reservoir (12-inch minimum length limit and 25-fish daily bag limit) with a five-fish daily bag limit and no minimum length limit. This type of regulation is appropriate in high-use situations, such as smaller urban water bodies, to allow anglers to harvest some fish while distributing the available harvest to as many anglers as possible. Replacing the current regulation will result in standardization of regulations and beneficial harvest reduction.

The amendment to §57.981 also modifies harvest regulations for black and white crappie for Lake Nasworthy, which is a 1,380-acre reservoir in San Angelo (Tom Green County). The reservoir has a relatively stable water level for West Texas and abundant shoreline access. The crappie population in Lake Nasworthy has long been characterized by high abundance, slow growth, below average condition, and poor size structure. Slower growth results in fewer crappie reaching legal size, as most crappie die of natural causes before growing large enough to be harvested. The combination of these factors negates any advantages to the population structure that could be derived from the use of a minimum length limit (MLL). Understandably, anglers are dissatisfied with lack of harvestable sized fish in the reservoir and have expressed support for modifying harvest regulations to allow for some take of crappie less than 10 inches in length. An increased harvest of smaller crappie may reduce overcrowding, improve fish condition, and increase angler satisfaction.

The amendment to §57.981 also makes changes to the harvest regulations for blue, channel, and flathead catfish on Lake Texoma (Cooke and Grayson counties) and the Texas waters of the Red River from the dam on Lake Texoma (Denison Dam) downstream to Shawnee Creek. Harvest regulations on Lake Texoma, a 74,686-acre reservoir that straddles the Texas/Oklahoma border, are implemented cooperatively by TPWD and the Oklahoma Department of Wildlife Conservation (ODWC). Currently, harvest regulations for game fishes are the same on both sides on the reservoir. However, some harvest regulations on the Red River below Lake Texoma differ from those on the reservoir and from Texas statewide harvest regulations. With the goal of standardizing regulations on both sides of Lake Texoma and the waters of the Red River below the Denison Dam while maintaining angling opportunities, the amendment alters harvest regulations for blue, channel, and flathead catfish in the Texas waters of Lake Texoma and the Red River from Denison Dam downstream to Shawnee Creek. For blue and channel catfish, the amendment eliminates the minimum length limit and allows the harvest of one blue catfish 30 inches or greater. For flathead catfish, the amendment eliminates the minimum length limit and impose a five-fish daily bag limit.

The amendment also eliminates a time constraint on a special regulation governing the harvest of alligator gar on Falcon International Reservoir (Starr and Zapata counties). The department conducted a comprehensive study at the reservoir in 2014 to obtain the biological information necessary to make management recommendations for alligator gar. In 2015, the Texas Parks and Wildlife Commission implemented a bag limit of five alligator gar on the reservoir, directed staff to monitor the alligator gar population to determine any negative effects of the five-fish daily bag, and placed an expiration date on the special provision of September 1, 2020. Monitoring data from the reservoir continues to support the determination that the Falcon Reservoir alligator gar population can be sustained under the five-fish daily bag. Therefore, the amendment continues the effectiveness of the special provision.

Finally, the amendment alters recreational harvest regulations for flounder. On the basis of pronounced downward trends in fishery independent data (bag seines, bay trawls, gill nets) which showed declines in catch-per-unit-effort (abundance), and declining commercial and recreational landings, the department has determined that measures must be implemented to protect and replenish spawning stock biomass in the fishery. Recent department fishery-independent gill net survey monitoring data for both the fall and the spring have shown decreases in catch rates of 60% or greater compared to historic long-term data trends. Additionally, other fishery-independent data (bag seines and bay trawls) also show similar declining trends. These independent data collections target flounder at different points in the life cycle and thus provide a measure of recruitment (bag seines), sub-adults (bay trawls) and adults (gill nets).

Lower levels of recruitment observed in fisheries-dependent bag seines may also be impacted by the warmer water temperatures experienced in the bays and gulf in more recent years. Research into the cultivation of flounder has shown that optimal larval survival of flounder is dependent on a very narrow range of temperatures from 16° C - 20° C (60.8° F - 68.0° F) for the first three weeks after spawn (usually in November to December). Current flounder harvest regulations consist of a 14-inch minimum length, a five-fish daily bag and possession limit for recreational take, and a 30-fish commercial daily bag and possession limit for commercial take, except for during the period from Novem-

ber 1-December 14, when there is a two-fish daily bag and possession limit for both recreational and commercial take. During the month of November, means of take is limited to pole-and-line only. The amendment increases the minimum length limit to 15 inches, effective September 1, 2020, and closes the season from November 1 - December 14 beginning in 2021 for both commercial and recreational harvest. At 14 inches, approximately 50% of female flounder are sexually mature. At 15 inches, over 90% of females are sexually mature. Reducing flounder harvest prior to and during the fall migration will increase escapement of adults to the Gulf and can increase the potential spawning population and therefore increase recruitment. Additionally, the increase in minimum size will allow more females to reach sexual maturity and spawn before being harvested. Since most of the flounder harvest is comprised of females and occurs during spawning, the amendment is projected to increase spawning stock biomass.

The amendment to §57.992, concerning Bag, Possession, and Length Limits, alters commercial harvest regulations for flounder, for the same reasons presented earlier in this preamble in the discussion of recreational harvest regulations for flounder.

The amendment to §57.993, concerning Commercial Harvest Report, clarifies reporting requirements. The department has determined that the rule as currently worded does not make clear that certain licensees are required to report all aquatic products taken under the respective licenses, not just the portion of aquatic product that is sold subsequent to landing. The purpose of the rule is to give the department accurate harvest data on various species, which is then used to inform the department's management decisions on those species. Obviously, if the entirety of commercial harvest is not reported the department's management decisions could be affected.

The amendment to §57.997, concerning Fishing Guide License Requirements, affects provisions concerning licensing requirements for the Paddle Craft All-Water Guide License. The amendment removes existing language concerning the successful completion of the "Four Star Leader Sea Kayak" training from the British Canoe Union and "Coastal Kayak Day Trip Leading" from the American Canoe Association and replaces it with "paddle craft leading course from the American Canoe Association or a department-approved organization." The training courses referenced in the current rule no longer exist, and the department seeks to use a generic reference to avoid having to engage in rulemaking each time a course is discontinued or renamed.

Inland Fisheries

The department received 19 comments opposing adoption of the portion of the proposed amendment to §57.981 that affects harvest regulations for largemouth bass on Moss Lake in Cooke County. Of those comments, seven articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the proposed length limit will drive tournament anglers from the lake. The department disagrees with the comment and responds that department survey data indicate approximately 10 percent of the angling on pressure on Moss Lake is tournament-related, which suggests that the majority of angling effort there is not a result of tournaments. The department also notes that catch-weigh-and-release for oversize fish is lawful. No changes were made as a result of the comment.

One commenter opposed adoption and stated that increasing the maximum length limit will not result in "people taking fish home." The department disagrees with the comment and responds that the removal of the minimum length limit for largemouth bass will allow more bass to be harvested, which is one of the goals of the regulation change. No changes were made as a result of the comment.

One commenter opposed adoption and stated that rule will decrease harvest and cause the proliferation of smaller fish. The department disagrees with the comment and responds that the rule is expected to result in the increased harvest of smaller spotted and largemouth bass, and the decreased abundance of smaller bass should allow remaining largemouth bass to grow to larger lengths. No changes were made as a result of the comment.

One commenter opposed adoption and stated that spotted bass and small largemouth bass are abundant in the reservoir and the department should increase stocking efforts. The department disagrees with the comment and responds that the rules are intended to redirect harvest to spotted bass populations that compete with largemouth bass, which should result in larger largemouth bass over time. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a minimum length limit. The department disagrees with the comment and responds that the removal of smaller fish from the population structure is desirable. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should require largemouth bass greater than 24 inches in length to be kept alive and weighed, but bass smaller than 24 inches in length to be released immediately. The department disagrees with the comment and responds that although the regulation does prohibit the retention of largemouth bass of greater than 16 inches in length, it allows but does not require the temporary retention of largemouth bass of greater than 24 inches in length for potential inclusion in the department's ShareLunker program. The department does not believe that participation in the ShareLunker program should be mandatory. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for largemouth bass should be lowered to three. The department disagrees with the comment and responds that this fishery is characterized by high interspecific competition, which can be most efficiently addressed by redirecting harvest towards smaller largemouth bass and other species.

The department received 293 comments supporting adoption of the proposed amendment.

The department received 54 comments opposing adoption of the proposed amendments to §57.973 and §57.981 concerning harvest and gear regulations for largemouth bass and catfish on Brushy Creek Lake and Brushy Creek in Williamson County. Of those comments, 26 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Ten commenters opposed adoption and stated that cast nets should be allowed to catch minnows. The department disagrees with the comment and responds that heavy utilization of these waterbodies makes it necessary to restrict gears to pole-and-line only in order to maintain the overall population structure neces-

sary to support quality angling. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that the minimum length limit for largemouth bass should remain at 18 inches. The department disagrees with the comment and responds that currently few bass are being harvested, and as is typical of many bass fisheries in Texas with a 14-inch minimum length limit, harvest is also low. Decreasing the limit from 18 to 14 inches should not have a measurable impact bass abundance in the lake. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rule prohibits children from catching minnows and is elitist or caters to the "fly-fishing elite." The department disagrees with the comment and responds that the department does not consider children who catch minnows simply for the outdoor experience to be criminally culpable and that law enforcement discretion is warranted, and that pole-and-line restriction is not motivated by any bias towards specific gears, but rather toward improving the quality of angling in the face of intense utilization. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that there are plenty of minnows in the creek. The department disagrees with the comment and responds that heavy utilization of the waters in question impacts many different species and that artificial baits and natural baits acquired from other sources are not believed to be difficult to obtain. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is taking people's rights away. The department disagrees with the comment and responds that the commission is charged with protecting and conserving public resources for the enjoyment of present and future generations and that allowing the degradation of that resource to the point of nonexistence is a dereliction of that duty. No charges were made as a result of the comment.

One commenter opposed adoption and stated that lowering the length limit will have a devastating effect on the quality of fish and that the current limit is not well posted or advertised at the lake or in the Outdoor Annual. The commenter also stated that undersized fish are being harvested on a regular basis. The department disagrees that the rule will harm the quality of the fishery. As is typical of many bass fisheries in Texas, harvest of bass from Brushy Creek Lake is also low. Population abundance of bass in the lake does not appear to be impacted by legal or unlawful harvest at this time. Additionally, the department notes that it is the responsibility of the angler to be familiar with regulations in effect on any water body, that those regulations are not difficult to locate in department publications, that the department's website, law enforcement offices, and biologists are readily available to answer questions, and that people who harvest fish unlawfully are subject to criminal prosecution. No changes were made as a result of the comment.

One commenter opposed adoption and stated that cast netting is a skill and practice since the beginning of time and the department should instead be "going after industrial polluters." The department disagrees that investigation of environmental crimes would accomplish the goals of the regulations as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all passive gears should be prohibited. The department disagrees with the comment and responds that there are rules in place to prevent the deleterious effects of passive gears. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the restrictions would be more beneficial if employed only on the segment of Brushy Creek between U.S. 183 and F.M. 1460 because that segment is where the public access and best water availability and quality is. The department disagrees with the comment and responds that restricting the effect of the rule to the small stream segment between U.S. 183 and F.M. 1460 at the upper reaches of Brushy Creek would not result in the desired population impacts downstream. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule would eliminate the only place to get bait for 20 miles. The department disagrees with the comment and responds that bait is readily available at many locations in the area. No changes were made as a result of the comment.

The department received 665 comments supporting adoption of the proposed amendments.

The department received 24 comments opposing adoption of the portion of the proposed amendment to §57.981 concerning harvest regulations for crappie on Lake Nasworthy in Tom Green County. Of those comments, three articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that all fish harvested at under 10 inches in length will never be over 10 inches in length and that the rule will reduce opportunity to catch fish in general. The department disagrees with the comment and responds that the crappie population in Lake Nasworthy has long been characterized by high abundance, slow growth, below average condition, and poor size structure. Slower growth results in fewer crappie reaching legal size, as most crappie die of natural causes before growing large enough to be harvested. The combination of these factors negates any advantages to the population structure that could be derived from the use of a minimum length limit. The department also notes that regulations regarding crappie do not affect other fishing opportunities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a maximum length "to allow trophy fish to reproduce." The department disagrees with the comment and responds that a maximum length limit will not address the high abundance that makes it difficult for crappie to reach the current minimum length limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that removing the minimum length limit will encourage overfishing of an already vulnerable population. The department disagrees with the comment and responds that crappie are abundant on the lake, and removal of fish could address that issue by reducing competition and allowing for greater growth. No changes were made as a result of the comment.

The department received 254 comments supporting adoption of the proposed amendment.

The department received 14 comments opposing adoption of the proposed amendment to §57.981, concerning blue, channel, and flathead catfish on Lake Texoma and the Red River in Cooke and Grayson counties. Of those comments, three articulated a specific reason or rationale for opposing adoption. Those

comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that all passive gears should be prohibited. The department disagrees with the comment and responds that there are rules in place to prevent the deleterious effects of passive gears. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the minimum length limit should stay as it is to give the fish a chance to grow and spawn. The department disagrees with the comment and responds that the goal of the proposed rule is to standardize regulation with Oklahoma to make enforcement and compliance easier, but the regulation is not expected to result in negative impacts to populations or population structures. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas should adopt a statewide catfish regulation similar to that in effect in Louisiana. The department disagrees with the comment and responds the department is charged with a statutory duty to protect and conserve public fisheries resources for the enjoyment and use of present and future generations of Texans and that adopting Louisiana catfish regulations (100 catfish in any combination, including 25 undersized, hoop nets legal) would not serve that goal. No changes were made as a result of the comment.

The department received 244 comments supporting adoption of the proposed amendment.

The department received 17 comments opposing adoption of the proposed amendment to §57.981 concerning alligator gar on Falcon Reservoir in Zapata County. Of those comments, three articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that all passive gears should be prohibited and there should be a limit on size and number for the take of all gar species. The department disagrees with the comment and responds that there are rules in place to prevent the deleterious effects of passive gears and that restrictions in the form of bag and size limits are imposed when and where necessary, based on the specifics of biological necessity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the resource cannot withstand a five-fish daily bag limit. The department disagrees with the comment and responds that angler effort directed at gar on the reservoir is not intense enough to result in negative population impacts with a five-fish daily bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be reduced. The department disagrees with the comment and responds that resource monitoring data indicate that the current five-fish daily bag limit is sustainable. No changes were made as a result of the comment.

The department received 238 comments supporting adoption of the proposed amendment.

Coastal Fisheries - Flounder

General

Five hundred eighty-nine commenters expressed support for adoption of the rules as proposed. Four hundred fourteen commenters expressed opposition to adoption of the rules as proposed either in general or to certain portions of the rules, with some commenters expressing more than one area of opposition.

Eighty-four commenters opposed adoption and stated preferences for various combinations of minimum length (16 inches, 17 inches, 18 inches) and bag limits (one per day year-round, two per day year-round, three per day year-round), with closures (October to February, October to December, November only, Thanksgiving to January, November and December, November and half of December, December only, and so on), without closures, and various combinations of bag limits and gear restrictions during certain months (no gigging during closure, no commercial harvest during closure, take by pole and line only during closure, etc.). The department disagrees with the comments and responds that the rules as adopted represents what the department believes is the appropriate balance between the biological necessity to protect the fishery and the interests of various recreational and commercial user groups while minimizing disruptions and conflicts to the greatest extent possible in that context. No changes were made as a result of the comments to the actual regulation proposals, but the implementation date of the closure timeframe was delayed from Sept. 1, 2020 to Sept. 1, 2021.

Twenty-four commenters opposed adoption and stated that flounder should be designated a game fish. The department disagrees with the comment and responds that designation as a game fish under current rules would prevent the harvest of flounder by any means other than pole and line, which the department believes is not necessary to manage the species at the current time. The department also notes that designation as a game fish does not limit the commission's authority to prescribe whatever means and methods restrictions it deems necessary to properly manage a species. No changes were made as a result of the comments.

Thirteen commenters opposed adoption and stated that the Coastal Conservation Association should not be allowed to dictate regulations. The department agrees with the comment and responds that the Coastal Conservation Association played no role in the formulation of the proposed rules, and the department's recommendations are based on the best available science and strive to balance the interests of various recreational and commercial groups. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated, variously, that there should be a one, two, or three-fish daily bag limit, but no closure. The department disagrees with the comments and responds that manipulation of the bag limit, in and of itself, is insufficient as a method to timely stabilize flounder populations. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department is biased against recreational anglers. The department disagrees with the comments and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. The department believes the rules as adopted equitably balance the interests of enthusiasts of various means of take while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Length Limits

Twenty-three commenters opposed adoption and stated that the current 14-inch minimum length limit should be retained. The department disagrees with the comments and responds that increasing the minimum length limit is necessary to protect younger females, allowing a larger percentage of them to reach maturity and increase spawning biomass. No changes were made as a result of the comments.

Fifteen commenters opposed adoption and stated that there should be a slot limit for flounder, with one of the commenters expressing a desire for a slot limit only during the annual flounder migration, another for the rules to allow the retention of one oversize flounder, and another stating the need for an oversize flounder tag. The department disagrees with the comments and responds that a slot limit would not achieve desired management results of the proposed changes at this time. The department's goal is to ensure that females reach sexual maturity. The increase in minimum size to 15 inches will allow females to reach maturity and have an opportunity to spawn. Because a significant portion of the flounder fishery is the recreational and commercial gig fishery, further increases in minimum size limits will not be efficacious if there is a high percentage of misidentification of legal size fish due to the subsequent release mortality that would occur. Additional release mortality would also occur with the hook and line fishery as well since fish would have a greater timeframe to be caught before reaching the legal size limit. While a slot limit would provide additional protection to females above the maximum size limit, since flounder reach maturity relatively quickly and are fairly short-lived, a slot limit was not considered as a preferred approach to further protecting the spawning biomass at this time. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated that increasing the minimum size limit will threaten female flounder. The department disagrees with the comments and responds that increasing the minimum size limit is intended to ensure that most female flounder are sexually mature at harvest and to give female flounder additional spawning potential. No changes were made as a result of the comments.

One commenter opposed adoption and stated that increasing the minimum size limit for flounder threatens male flounder. The department disagrees with the comment and responds that female flounder comprise most of the harvest and the increase in minimum size limit is less likely, rather than more likely, to negatively impact males, which generally do not exceed 14 inches in length. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should allow the retention of one oversize flounder in November and December if taken by pole and line. The department disagrees with the comment and responds that neither the current rule nor the rule as adopted stipulates a maximum size requirement. The current bag limit during the closure timeframe is already set at two fish and by allowing the take of one fish over a certain size, the benefits of the proposed closure would be reduced. Both release mortality as well as taking of fish during the closure would not lead to the anticipated benefits needed to ensure an increase in spawning potential.

Closures

Sixty-seven commenters opposed adoption and stated that there should be no closed season for flounder, adding, variously, that the proposed closure is too drastic, knee-jerk, going too far, or overreach. The department disagrees with the comments and responds that although the proposed closure has been deferred for a year, it remains necessary in order to address the long-term population declines observed in the data. Closures are by definition significant actions that should be implemented so as to achieve the greatest effect in the smallest timeframe. The department has concluded that a six-week closure is the minimum time span necessary to stabilize the flounder fishery with the least amount of inconvenience to anglers. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the proposed closure should be for the entire months of November and December and should apply only to commercial fishing. The department disagrees with the comments and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. The department believes that the rules, as adopted, equitably balance the interests of enthusiasts of various means of take while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a one-year closure of the flounder fishery. The department disagrees with the comment and responds that a one-year closure would not be sufficient to stabilize or reverse flounder population declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department did not furnish any explanation of the parameters for discontinuing the proposed closure. The department agrees with the comment and responds that given the department's mission, restrictions will be eliminated when they are no longer biologically necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be closed in alternating years until stocks are recovered. The department disagrees with the comment and responds that a complete closure in alternating years would result in unnecessary disruptions to users without providing the benefits of the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that closures should be based on water temperature. The department disagrees with the comment and responds that the logistical challenges of monitoring water temperatures along the entirety of the Texas coast and communicating resultant closures to the public make this suggestion infeasible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be a two-year closure of the commercial flounder fishery. The department disagrees with the comments and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. The department believes that rules as adopted equitably balance the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Gear

Twenty-three commenters opposed adoption and stated that gigging is responsible for flounder declines and should be limited or eliminated. The department disagrees with the comments and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. In balancing the interests of various user groups and the methods of take used by each, the department believes that the rules as adopted will equitably distribute opportunity while meeting management goals, which are to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that gigging should be prohibited. The department disagrees with the comments and responds that the decline in spawning stock biomass is additive with respect to all methods of take, regardless of efficiency. The department believes that such a change would exert too drastic a reduction of opportunity. In balancing the interests of various user groups and the methods of take used by each, the department believes that the rules as adopted will equitably distribute opportunity while meeting management goals. No changes were made as a result of the comments.

Ten commenters opposed adoption and stated that guided gigging parties are responsible for flounder declines and that guided gigging parties should be limited or prohibited. The department disagrees with the comment and responds that previous research indicates the hook and line fishery harvests a larger proportion of flounder. Additionally, the bag and possession limits and associated benefits to spawning stock biomass are modeled using the department's best estimates of fishing effort, fishing success, and population status. Each person who purchases a license is entitled to the bag limit of flounder prescribed by law, irrespective of who may be accompanying them. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that gigging should be allowed only by wading and not from boats. The department disagrees with the comment and responds that in addition to the primary obligation of biologically protecting fisheries, the department also has an obligation to equitably distribute opportunity among user groups. The department believes that the rules as adopted equitably balance the interests of enthusiasts of various means of take while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. The department also notes that impacts to the population are regulated by the bag limit, not the method of take. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that gigging should be prohibited for the entire months of November and December. The department disagrees with the comments and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. The department believes that rules as adopted equitably balance the interests of enthusiasts of various means of take while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Two commenters opposed adoption and stated in various ways that the rules penalize or are biased against gigging. The department disagrees with the comment and responds that in addition to the department's duty to protect and conserve the resource, it has a responsibility to equitably distribute opportunity among various user groups. Therefore, no particular user group is favored over another. The department believes that rules as adopted equitably balance the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Commercial

Eighty-four commenters opposed adoption and stated that flounder declines are the result of excessive harvest by commercial fishing operations and that commercial harvest should be curtailed or eliminated. The department disagrees and believes the rules as adopted equitably balance the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Fourteen commenters opposed adoption and stated that flounder bycatch by shrimpers is responsible for flounder declines. The department disagrees with the comments and responds that the department's shrimping license buyback program has steadily decreased the impacts of flounder bycatch by bay shrimpers over the last two decades. In order to increase spawning opportunities in light of the fishery effort trends in the inshore shrimp fishery and in the flounder fishery, the rules needed to be directed toward the directed fishery to ensure greater spawning potential. No changes were made as a result of the comments.

Six commenters opposed adoption and stated that the season should be closed for time periods varying from one to five years for commercial flounder fishing effort, bay shrimping, and oystering. The department disagrees with the comments and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. The department believes that rules as adopted equitably balance the interests of enthusiasts of various means of take while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the commercial bag limit should be the same as the recreational bag limit. The department disagrees with the comment and responds that in addition to having a statutory duty to protect and conserve public resources, the department also has a duty to equitably distribute opportunity to various types of users, when it can be done responsibly and within the tenets of sound biological management. The department believes that rules as adopted equitably balance the interests of recreational and commercial anglers while meeting the goal of the rules, which is to restore spawning stock biomass in the flounder fishery. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that there should be an aggregate bag limit for flounder on boats used by fishing guides to provide angling opportunity for paying customers. The department agrees with the comment and responds that current rules provide that the bag limit for a guided fishing party is equal

to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the 30-fish per day commercial bag limit for flounder should apply to all angling activities conducted in one day by a person who holds a commercial license, including fish taken by paying customers on guided trips. The department agrees with the comment and responds that the daily bag limit for harvest by commercial license does apply to the commercial license for the entire day. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should pay commercial fishing operators not to fish. The department disagrees with the comment. The commercial finfish license numbers are under a limited entry system, and there is a commercial license buyback in place to reduce fishing effort over the long-term. No changes were made as a result of the comment.

One commenter opposed adoption and stated that commercial licensees are allowed to keep fishing at night, when the recreational fishery is closed. The department disagrees with the comment and responds that there are no restrictions on the time of day that commercial and recreational angling may take place. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should designate zones where commercial activity is prohibited in order to protect spawning fish. The department disagrees with the comment and responds that flounder do not spawn in a single place at a single time, or even in a few places at a single time, or in known places at known times; they spawn in many locations at unpredictable times, making it problematic for a zone system to be effective. No changes were made as a result of the comment.

Enforcement

Fifteen commenters opposed adoption and stated that enforcement of existing regulations is insufficient, leading to "double bagging" and retention of undersized fish. The department disagrees with the comment and responds that regulations are obeyed by the vast majority of users, that unscrupulous persons who disregard the law do so consciously, and that when such persons are detected by department enforcement personnel, they are cited and prosecuted. No changes were made as a result of the comments.

Data

Thirty-one commenters opposed adoption and stated in various ways that flounder are plentiful. The department disagrees with the comments and responds that all scientific indices available to the department from both resource dependent and harvest dependent monitoring programs show flounder populations are experiencing a continued long-term declining trend. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the department's data is flawed but offered no specific critique of methodology or design. The department disagrees with the comments and responds that the department's data collection efforts are robust, long-term, and scientifically valid. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department was not transparent with the data used to formulate the proposal. The department disagrees with the comment and responds that not only was the department transparent with data presentations at meetings prior to the rule proposals and public hearings to discuss the rule proposals, the department also made the data available to any requestor. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there was no data to support the department's proposal. The department disagrees with the comment and responds that there is more than ample data to support the department's management decisions regarding flounder. The department was transparent with data presentations at meetings prior to the rule proposals and public hearings regarding the rule proposals, and the department also made the data available to any requestor. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should get data from fishermen, not organizations. The department disagrees with the commenter and responds that the department relies upon resource dependent and harvest dependent datasets generated by scientifically valid methodologies to determine fisheries management decisions, not upon anecdotal information or opinion, regardless of the source. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's data was incomplete. The commenter offered no further explanation. The department disagrees with the comment and responds that department data is more than sufficient for purposes of informing flounder management strategies. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the department's sampling efforts are not aimed specifically at flounder and such sampling as it relates to flounder is therefore accidental. The department disagrees with the comment and responds that the department's resource monitoring program has collected fishery independent data for over 40 years and that it provides a standardized, consistent view of the populations of coastal species. The department employs various types of sampling including gill nets, bag seines, and trawls to collect data on the relative abundance, size, and distribution of various life stages of a wide range of species of finfish in Texas coastal waters. Although gear types used for the resource monitoring program may not be specifically designed for capturing only flounder, their efficiency at landing flounder has remained constant through time. These data show a large, long-term relative decline in flounder populations. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department does not conduct angler surveys on flounder fishermen and flounder guides returning at night. The department agrees that the department does not conduct angler surveys on flounder fishermen and flounder guides returning at night, but the department collects mandatory commercial landings data that includes all landings, including fish landed at night. The department is confident that the current efforts effectively monitor trends in commercial and recreational flounder landings over time. Additionally, TPWD has collected fishery independent data for over 40 years that provides a standardized, consistent view of the populations of coastal species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's gill net surveys should be run parallel to the shore, not perpendicular, so it intercepts flounder going to and from the shore. The department disagrees with the comment and responds that setting gill nets perpendicular to the shoreline ensures a higher encounter rate because it is also perpendicular to the along-shore current and spans a broader depth zone than parallel sets. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more studies are needed. The department disagrees with the comment and responds that department survey and sampling efforts are robust, continuous, and scientifically valid, and the long-term data trends indicate an unmistakable population decline in flounder abundance. No changes were made as a result of the comment.

Miscellaneous

Seven commenters opposed adoption and stated that once regulations are in place they are never removed. The department disagrees with the comments and responds that the department does not maintain unnecessary regulations. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that there should be a "sunset" provision in the rules. The department disagrees with the comments and responds that a sunset provision is unnecessary because the regulations are based on the biology of the fishery; if circumstances justify changing opportunity, the department will do so. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that nature should be left alone. The department disagrees that doing nothing does not benefit natural systems and populations in the face of demonstrable human-caused negative impacts. No changes were made as a result of the comments.

Four commenters opposed adoption and stated in some manner that state regulations make it difficult to feed a family. The department disagrees with the comments and responds that the department regulates fisheries to ensure the sustainability of the resource for public use and enjoyment as well as to adopt rules when needed that equitably balance the interests of recreational and commercial anglers while meeting the goal of the rules. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that rules keep getting more restrictive. The department disagrees with the comment and responds that regulations are necessary to protect resources, especially those experiencing significant population declines. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the department is taking away rights. The department disagrees with the comments and responds that fisheries resources are the property of the people of the state and the public has a right to enjoy the pursuit of those resources, but only under the laws established to protect and conserve the resource for the enjoyment of present and future generations. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the department shouldn't eliminate a tradition. The department disagrees that the rules would eliminate a tradition and notes that tradition cannot supersede prudent and conscientious scientific management of a public resource. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules will have negative economic impact on businesses and communities. The department disagrees that the regulations themselves have any direct impact on local economies or communities. No changes were made as a result of the comments.

Two commenters opposed adoption and commented about the effectiveness of regulation, with one commenter stating that if regulations worked there would be more flounder and another that if the current regulations aren't effective, additional regulations won't be effective, either. The department disagrees with the comments and responds that the department has a statutory duty to protect and conserve flounder and that population declines would be much more pronounced in the absence of regulations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules should be the same in waters shared with Louisiana. The department disagrees with the comments and responds that the department will implement resource management decisions in the best interests of the citizens of Texas. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department stocks too many redfish that are eating flounder. The department disagrees with the comments and responds that previous research effort conducted by the department indicate redfish predation is not a significant component of overall flounder population declines. No changes were made as a result of the comments.

One commenter opposed adoption and stated that fees should be increased to fund stocking efforts. The department disagrees with the comment and responds that flounder declines cannot be reversed by stocking efforts alone. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a person has the right to catch fish for food at any time. The department disagrees with the comment and responds that fish in public water are the property of the people of the state. The commission is charged by statute with establishing regulations governing the take of fish to ensure sustainable populations, and persons who violate those regulations commit a criminal act. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has no right to interfere with a person's god-given right to fish. The department disagrees with the comment and responds that it has a statutory duty to protect and conserve public resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the state is taking our fish." The department disagrees with the comment and responds that fish in public waters are the property of the people of the state that are managed by the department on behalf of the people under a statutory duty to protect and conserve public resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "a public resource should never be closed, the state wants more money, and the gulf should not be regulated." The department disagrees with the comment and responds that there is ample historic evidence that failure to adequately regulate the exploitation of public resources inevitably results in over harvest and population declines. There is no connection between department revenue

and the rules as adopted. No changes were made as a result of the comment.

One commenter opposed adoption and stated the department's proposal is tyranny. The department disagrees with the comment and responds that the rules as adopted were duly promulgated in accordance with the department's statutory authority and applicable statutory law and due process. No changes were made as a result of the comment.

One commenter opposed adoption and stated that public resource should not be exploited for profit. The department conditionally disagrees with the comment and responds that commercial exploitation of a public resource is acceptable provided there is not statutory prohibition of such exploitation and there is no danger of harm to the resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that Texas should follow Louisiana fishing regulations. The department disagrees with the comment and responds that the department will implement resource management decisions in the best interests of the citizens of Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that people will just buy a Louisiana license and take up to 10 fish per day fishing the exact same waters. The department disagrees with the comment and responds that possession of fish taken in Texas waters in excess of Texas bag and possession limits is a criminal offense. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should create a boat permit for guides who take customers to catch flounder and use the revenue to pay for additional law enforcement. The department disagrees with the comment and responds that there is no statutory authority for such a permit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no reason to fish any more. The department disagrees with the comment and responds that there are many species other than flounder that can be enjoyed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that pollution causes flounder declines. The department disagrees that pollution alone is the causal factor or even a significant contributor to documented declines in flounder populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that once closure occurs it will never be rescinded. The department disagrees with the comment and responds that if the biological conditions necessitating the closure are eliminated, there would be cause to eliminate the closure in response. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that hook and line angling does not affect flounder populations. The department disagrees with the comment and responds that all methods of take exert an effect on populations, particularly those species that are concentrated during migration behaviors, and impacts from various gear types are additive. No changes were made as a result of the comments.

One commenter opposed adoption and stated that seasonal abnormal weather is the cause of flounder population declines. The department disagrees with the comment and responds that flounder populations have exhibited a declining trend for decades, which is not related to the occasional drought, hurricane, or other specific weather event. No changes were made as a result of the comment.

Commercial Reporting

One commenter opposed adoption and stated that guides should be required to participate in the department's trip ticket reporting program. The department disagrees with the comment. The trip-ticket program is a mandatory reporting system for commercial fishery licenses. No changes were made as a result of the comment.

Paddle Craft Guide Rules

Two hundred eight-five commenters expressed support for adoption of the rules as proposed. One hundred seventeen commenters expressed opposition to adoption of the rules as proposed either in general or to certain portions, with some commenters expressing more than one area of opposition.

Eight commenters opposed adoption and stated that people should not be required to obtain a guide license, take a course, or be certified in order to go paddling or to fish from paddle craft. The department agrees with the comments and responds that the rules do not apply to all paddle craft, just to those used by fishing guides. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there is nothing wrong with the current rule and additional burdens will not yield results. The department disagrees with the comment and responds that because the rule change is non-substantive, there is no additional burden. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are too many permits and licenses and it is too hard to own a boat. The department disagrees with the comment and responds that the rule in question applies to the use of paddle craft by fishing guides and does not apply to boats. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will affect access to water and negatively impact kayak guides by forcing clients to obtain licenses. The department disagrees with the comment and responds that the rule does not affect access to the water or the clients of kayak guides. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if paddle craft licenses are required, power boat licenses should be required. The department disagrees with the comment and responds that the rule affects only fishing guides who use paddle craft. No changes were made as a result of the comment.

One commenter opposed adoption and stated that paddle craft should be prohibited in coastal waters. The department disagrees with the comment and responds that rule is related to training requirements for fishing guides who use paddle craft. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no course requirements for paddle craft guides. The department disagrees with the comment and responds that the course provides paddle craft guides with training to address critical safety issues unique to the operation of paddle craft. No changes were made as a result of the comment.

One commenter opposed adoption and stated that additional fees are not acceptable. The department disagrees that the rule imposes a fee on any person. No changes were made as a result of the comment.

One commenter opposed adoption and stated that courses will not change behavior, but enforcement will. The department disagrees with the comment and responds that rule affects only the requirements for licensure of fishing guides who use paddle craft. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule is pointless. The department disagrees with the comment and responds that the training courses referenced in the current rule no longer exist and the department seeks to use a generic reference to avoid having to engage in rulemaking each time a course is discontinued or renamed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "certain age groups should be grandfathered." The department disagrees with the comment and responds that there is no justification for exempting classes of individuals based on age. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the requirements should be left as is because they are effective. The department disagrees with the comment but does agree the rules are effective. The rule is simply ensuring the requirements of the current rule can still be maintained through a shift to more generic references to appropriate courses. No changes were made as a result of the comment.

One commenter opposed adoption and stated that licenses should be abolished. The department neither agrees nor disagrees with the comment and responds that in this case, the paddling guide license is required by statute and that requirement cannot be eliminated by the commission. No changes were made as a result of the comment.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.973

Statutory Authority

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

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 July 31, 2020.

TRD-202003104

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Effective date: September 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 389-4775

DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.981

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

§57.981. Bag, Possession, and Length Limits.

(a) For all wildlife resources taken for personal consumption and for which there is a possession limit, the possession limit shall not apply after the wildlife resource has reached the possessor's residence and is finally processed.

(b) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(c) There are no bag, possession, or length limits on game or non-game fish, except as provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game and non-game fish except as otherwise provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document (WRD) from the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code. The properly executed WRD document shall accompany the wildlife resource until it reaches the possessor's residence and is finally processed. The WRD must contain the following information:

(A) the name, signature, address, and fishing license number, as required of the person who killed or caught the wildlife resource;

(B) the name of the person receiving the wildlife resource;

(C) a description of the wildlife resource (number and type of species or parts); and

(D) the location where the wildlife resource was killed or caught (name of ranch; area; lake, bay or stream; and county).

(5) Except as provided in subsection (d) of this section, the statewide daily bag and length limits shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 38 inches.

(iii) Maximum length limit: No limit.

(B) Bass:

(i) The daily bag limit for largemouth, smallmouth, spotted, Alabama, and Guadalupe is 5, in any combination.

(ii) Alabama, Guadalupe, and spotted.

(I) No minimum length limit.

(II) No maximum length limit.

(iii) Largemouth and smallmouth.

(I) Minimum length limit: 14 inches.

(II) No maximum length limit.

(iv) Striped (including hybrids and subspecies).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(v) White.

(I) Daily bag limit: 25.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(C) Catfish:

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No maximum length limit.

(ii) flathead.

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(III) No maximum length limit.

(iii) gafftopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(D) Cobia.

(i) Daily bag limit: 2.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(E) Crappie, black and white (including hybrids and subspecies).

(i) Daily bag limit: 25.

(ii) Minimum length limit: 10 inches.

(iii) No maximum length limit.

(F) Drum, black.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(iv) One black drum over 52 inches may be retained per day as part of the five-fish bag limit.

(G) Drum, red.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20 inches.

(iii) Maximum length limit: 28 inches.

(iv) During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.

(H) Flounder: all species (including hybrids and subspecies).

(i) (No change.)

(ii) Minimum length limit: 15 inches.

(iii) (No change.)

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(I) Gar, alligator.

(i) Daily bag limit: 1.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

(v) Any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section,

except for persons selected for opportunity as provided in §57.972(j) of this title (relating to General Provisions).

(vii) Except for persons selected for opportunity as provided in §57.972(j) of this title, no person in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(J) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(K) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(L) Marlin.

(i) Blue.

(I) No daily bag limit.

(II) Minimum length limit: 131 inches.

(III) No maximum length limit.

(ii) White.

(I) No daily bag limit.

(II) Minimum length limit: 86 inches.

(III) No maximum length limit.

(M) Mullet: all species (including hybrids, and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(N) Sailfish.

(i) No daily bag limit.

(ii) Minimum length limit: 84 inches.

(iii) No maximum length limit.

(O) Seatrout, spotted.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) Maximum length limit: 25 inches.

(iv) Only one spotted seatrout greater than 25 inches may be retained per day. A spotted seatrout retained under this subclause counts as part of the daily bag and possession limit.

(P) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Silky;

(XVIII) Sixgill;

(XIX) Smalltail;

(XX) Whale; and

(XXI) White.

(v) Except for the species listed in clause (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(Q) Sheepshead.

(i) Daily bag limit: 5.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(R) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(S) Snook.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 24 inches.

(iii) Maximum length limit: 28 inches.

(T) Tarpon.

(i) Daily bag limit: 1.

(ii) Minimum length limit: 85 inches.

(iii) No maximum length limit.

(U) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(V) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

(W) Trout (rainbow and brown trout, including their hybrids and subspecies).

(i) Daily bag limit: 5 (in any combination).

(ii) No minimum length limit.

(iii) No maximum length limit.

(X) Walleye and Saugeye.

(i) Daily bag limit: 5.

(ii) No minimum length limit.

(iii) No maximum length limit.

(iv) Two walleye or saugeye of less than 16 inches may be retained.

(d) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(1) Freshwater species.

(A) Bass: largemouth, smallmouth, spotted, and Guadalupe (including their hybrids and subspecies). Devils River (Val Verde County) from State Highway 163 bridge crossing (Bakers Crossing) to the confluence with Big Satan Creek including all tributaries within these boundaries and all waters in the Lost Maples State Natural Area (Bandera County).

(i) Daily bag limit: 0.

(ii) No minimum length limit.

(iii) Catch and release only.

(B) Bass: largemouth and spotted.

(i) Caddo Lake (Marion and Harrison counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 - 18 inch slot limit (largemouth bass); no limit for spotted bass.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches. No more than 4 largemouth bass 18 inches or longer may be retained. Possession limit is 10.

(ii) Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 14 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(iii) Sabine River (Newton and Orange counties) from Toledo Bend dam to a line across Sabine Pass between Texas Point and Louisiana Point.

(I) Daily bag limit: 8 (in any combination with spotted bass).

(II) Minimum length limit: 12 inches (largemouth bass); no limit for spotted bass. Possession limit is 10.

(C) Bass: largemouth.

(i) Chambers, Hardin, Galveston, Jefferson, Liberty (south of U.S. Highway 90), Newton (excluding Toledo Bend

Reservoir), and Orange counties including any public waters that form boundaries with adjacent counties.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(ii) Lake Conroe (Montgomery and Walker counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 inches.

(iii) Lakes Bellwood (Smith County), Davy Crockett (Fannin County), Kurth (Angelina County), Mill Creek (Van Zandt County), Moss (Cooke), Nacogdoches (Nacogdoches County), Naconiche (Nacogdoches County), Purtis Creek State Park (Henderson and Van Zandt counties), and Raven (Walker).

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 inches.

(iv) Lakes Bright (Williamson County), Casa Blanca (Webb County), Cleburne State Park (Johnson County), Fairfield (Freestone County), Gilmer (Upshur County), Marine Creek Reservoir (Tarrant County), Meridian State Park (Bosque County), Pflugerville (Travis County), Rusk State Park (Cherokee County), and Welsh (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 18 inches.

(v) Bedford Boys Ranch Lake (Tarrant County), Buck Lake (Kimble County), Lake Kyle (Hays County), and Nelson Park Lake (Taylor County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release only.

(vi) Lakes Alan Henry (Garza County), Grapevine (Denton and Tarrant counties), Jacksonville (Cherokee County), and O.H. Ivie Reservoir (Coleman, Concho, and Runnels counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) It is unlawful to retain more than two bass of less than 18 inches in length.

(vii) Nasworthy (Tom Green).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 18 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 18 inches in length.

(viii) Lakes Athens (Henderson County), Bastrop (Bastrop County), Buescher State Park (Bastrop County), Houston County (Houston County), Joe Pool (Dallas, Ellis, and Tarrant counties), Lady Bird (Travis County), Murvaul (Panola County), Pinkston (Shelby County), Timpson (Shelby County), Walter E. Long (Travis County), and Wheeler Branch (Somervell County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 14 - 21 inch slot limit.

(III) It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.

(ix) Lakes Fayette County (Fayette County), Fork (Wood Rains and Hopkins counties), Gibbons Creek Reservoir (Grimes County), and Monticello (Titus County).

(I) Daily bag limit: 5.

(II) Minimum length limit: 16 - 24 inch slot limit.

(III) It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

(x) Lake Lakewood (Williamson County).

(I) Daily bag limit: 3.

(II) Minimum length limit: 18 inches.

(D) Bass: striped and white bass their hybrids and subspecies.

(i) Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge and Toledo Bend Reservoir (Newton, Sabine, and Shelby counties).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit.

(III) No more than 2 striped bass 30 inches or greater in length may be retained each day.

(ii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 20.

(iii) Red River (Grayson County) from Denison Dam downstream to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(III) Striped bass caught and placed on a stringer in a live well or any other holding device become part of the daily bag limit and may not be released.

(iv) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 2 (in any combination).

(II) Minimum length limit: 18 inches.

(E) Bass: white. Lakes Caddo (Harrison and Marion counties), Texoma (Cooke and Grayson counties), and Toledo Bend (Newton Sabine and Shelby counties) and Sabine River (Newton and Orange counties) from Toledo Bend dam to I.H. 10 bridge.

(i) Daily bag limit: 25.

(ii) Minimum length limit: No limit.

(F) Carp: common. Lady Bird Lake (Travis County).

(i) Daily bag limit: No limit.

(ii) Minimum length limit: No limit.

(iii) It is unlawful to retain more than one common carp of 33 inches or longer per day.

(G) Catfish: blue. Lakes Lewisville (Denton County), Richland-Chambers (Freestone and Navarro counties), and Waco (McLennan County).

(i) Daily bag limit: 25 (in any combination with channel catfish).

(ii) Minimum length limit: 30-45-inch slot limit.

(iii) It is unlawful to retain blue catfish between 30 and 45 inches in length. No more than one blue catfish 45 inches or greater in length may be retained each day.

(H) Catfish: channel and blue catfish, their hybrids and subspecies.

(i) Lake Kyle (Hays County).

(I) Daily bag limit: 0.

(II) Minimum length limit: No limit.

(III) Catch and release and only.

(ii) Lake Livingston (Polk, San Jacinto, Trinity, and Walker counties).

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: 12 inches.

(iii) Trinity River (Polk and San Jacinto counties) from the Lake Livingston dam downstream to the F.M. 3278 bridge.

(I) Daily bag limit: 10 (in any combination).

(II) Minimum length limit: 12 inches.

(III) No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.

(iv) Lakes Kirby (Taylor County) and Palestine (Cherokee, Anderson, Henderson, and Smith counties).

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 20 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(v) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton Sabine and Shelby counties) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 50 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than five catfish 30 inches or greater in length may be retained each day.

(IV) Possession limit is 50.

(vi) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 15 (in any combination). (II) Minimum length limit: No limit

(III) No more than one blue catfish 30 inches or greater in length may be retained each day.

(vii) Brushy Creek (Williamson County) from the Brushy Creek Reservoir dam downstream to the Williamson/Milam county line, Canyon Lake Project #6 (Lubbock County), North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam, and South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(viii) Community fishing lakes.

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: No limit.

(ix) Bellwood (Smith County), Dixieland (Cameron County), and Tankersley (Titus County).

(I) Daily bag limit: 5 (in any combination).

(II) Minimum length limit: 12 inches.

(x) Lake Tawakoni (Hunt, Rains, and Van Zandt counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) No more than seven blue or channel catfish 20 inches or greater may be retained each day, and of these, no more than two can be 30 inches or greater in length.

(I) Catfish: flathead.

(i) Lake Texoma (Cooke and Grayson counties) and the Red River (Grayson County) from Denison Dam to and including Shawnee Creek (Grayson County).

(I) Daily bag limit: 5.

(II) Minimum length limit: No limit

(ii) Lakes Caddo (Harrison and Marion counties) and Toledo Bend (Newton, Sabine, and Shelby) and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 10.

(II) Minimum length limit: 18 inches.

(III) Possession limit: 10.

(J) Crappie: black and white crappie their hybrids and subspecies.

(i) Caddo Lake (Harrison and Marion counties), Toledo Bend Reservoir (Newton Sabine and Shelby counties), and the Sabine River (Newton and Orange counties) from Toledo Bend dam to the I.H. 10 bridge.

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(ii) Lake Fork (Wood, Rains, and Hopkins counties) and Lake O' The Pines (Camp, Harrison, Marion, Morris, and Upshur counties).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 10 inches.

(III) From December 1 through the last day in February there is no minimum length limit. All crappie caught during this period must be retained.

(iii) Lake Texoma (Cooke and Grayson counties).

(I) Daily bag limit: 37 (in any combination).

(II) Minimum length limit: 10 inches.

(III) Possession limit is 50.

(iv) Lake Nasworthy (Tom Green County).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: No limit.

(III) Possession limit is 50.

(K) Drum, red. Lakes Braunig and Calaveras (Bexar County), Coleto Creek Reservoir (Goliad and Victoria counties), and Fairfield (Freestone County).

(i) Daily bag limit: 3.

(ii) Minimum length limit: 20.

(iii) No maximum length limit.

(L) Gar, alligator.

(i) Falcon International Reservoir (Starr and Zapata counties).

(I) Daily bag limit: 5.

(II) No minimum length limit.

(III) No maximum length limit.

(ii) On the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches, except for persons selected by a department-administered drawing authorizing the take of a gar in excess of 48 inches in length.

(iii) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

(M) Shad gizzard and threadfin. Trinity River below Lake Livingston (Polk and San Jacinto counties).

(i) Daily bag limit: 500 (in any combination).

(ii) No minimum length limit.

(iii) Possession limit: 1000 (in any combination).

(N) Sunfish: all species. Lake Kyle (Hays County).

(i) Daily bag limit: 0.

(ii) Minimum length limit: No limit.

(iii) Catch and release and only.

(O) Trout: rainbow and brown trout (including hybrids and subspecies).

(i) Guadalupe River (Comal County) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. 306.

(I) Daily bag limit: 1.

(II) Minimum length limit: 18 inches.

(ii) Guadalupe River (Comal County) from the easternmost bridge crossing on F.M. 306 upstream to 800 yards below the Canyon Lake dam.

(I) Daily bag limit: 5.

(II) Minimum length limit: 12 - 18 inch slot limit.

(III) It is unlawful to retain trout between 12 and 18 inches in length. No more than one trout 18 inches or greater in length may be retained each day.

(P) Walleye. Lake Texoma (Cooke and Grayson counties).

(i) Daily bag limit: 5.

(ii) Minimum length limit: 18.

(2) Saltwater species. There are no exceptions to the provisions established in subsection (c)(5) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §§57.992, 57.993, 57.997

The amendments are adopted under the authority of Parks and Wildlife Code, §47.004, which authorizes the commission to adopt rules governing the issuance and use of a resident fishing guide license, including rules creating separate resident fishing guide licenses for use in saltwater and freshwater.

§57.992. Bag, Possession, and Length Limits.

(a) The possession limit applies to all aquatic animal life in the possession of or stored by any person, but does not apply to aquatic animal life that has been lawfully obtained and for which a person possesses an invoice or sales ticket showing the name and address of the seller or person from whom the aquatic animal life was obtained, the amount of aquatic animal life by number and species, date of the sale, and any other information required on a sales ticket or invoice.

(b) There are no bag, possession, or length limits on game fish, non-game fish, or shellfish, except as otherwise provided in this subchapter.

(1) Possession limits are twice the daily bag limit on game fish, non-game fish, and shellfish, except as provided in this subchapter.

(2) For flounder, the possession limit is the daily bag limit.

(3) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(4) The statewide daily bag and length limits for commercial fishing shall be as follows.

(A) Amberjack, greater.

(i) Daily bag limit: 1.

(ii) Minimum length: 34 inches.

(iii) Maximum length limit: No limit.

(B) Catfish.

(i) channel and blue (including hybrids and subspecies).

(I) Daily bag limit: 25 (in any combination).

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(ii) Gaffstopsail.

(I) No daily bag limit.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(C) Cobia.

(i) Daily bag limit: 2.

(ii) Minimum length limit: 40 inches.

(iii) No maximum length limit.

(D) Drum, black.

(i) Daily bag limit: None.

(ii) Minimum length limit: 14 inches.

(iii) Maximum length limit: 30 inches.

(E) Flounder: all species (including hybrids and subspecies).

(i) Daily bag limit: 30. Possession limit is equal to the daily bag limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(iv) During November, lawful means are restricted to pole-and-line only and the bag and possession limit for flounder is two. For the first 14 days in December, the bag and possession limit is two, and flounder may be taken by any legal means. On September 1, 2021, the provisions of this clause cease effect.

(v) Beginning September 1, 2021, the season for flounder is closed from November 1 through December 14 every year.

(F) Gar, alligator.

(i) Daily bag limit:

(I) On Falcon International Reservoir: 5.

(II) Remainder of the state: 1.

(ii) No minimum length limit.

(iii) No maximum length limit except that on the Trinity River and all tributary waters from the I-30 bridge in Dallas County downstream through Anderson, Ellis, Freestone, Henderson, Houston, Kaufman, Leon, Liberty, Madison, Navarro, Polk, San Jacinto, Trinity, and Walker counties to the I-10 bridge in Chambers County, including the East Fork of the Trinity River and all tributaries upstream to the Lake Ray Hubbard dam, the maximum length limit is 48 inches.

(iv) During May, no person shall fish for, take, or seek to take alligator gar in that portion of Lake Texoma encompassed within the boundaries of the Hagerman National Wildlife Refuge or that portion of Lake Texoma from the U.S. 377 bridge (Willis Bridge) upstream to the I.H. 35 bridge.

(v) any person who takes an alligator gar in the public waters of this state other than Falcon International Reservoir shall report the harvest via the department's website or mobile application within 24 hours of take.

(vi) Between one half-hour after sunset and one half-hour before sunrise, any lawful means other than lawful archery equipment and crossbow may be used to take an alligator gar in the portion of the Trinity River described in subsection (d)(1)(L)(ii) of this section. In the portion of the Trinity River described in §57.981(d)(1)(L)(ii) of this title (relating to Bag, Possession and Length Limits), no person may take an alligator gar by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise, or possess an alligator gar taken by means of lawful archery equipment or crossbow between one half-hour after sunset and one half-hour before sunrise.

(G) Grouper.

(i) Black.

(I) Daily bag limit: 4.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(ii) Gag.

(I) Daily bag limit: 2.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) Goliath. The take of Goliath grouper is prohibited.

(iv) Nassau. The take of Nassau grouper is prohibited.

(H) Mackerel.

(i) King.

(I) Daily bag limit: 3.

(II) Minimum length limit: 27 inches.

(III) No maximum length limit.

(ii) Spanish.

(I) Daily bag limit: 15.

(II) Minimum length limit: 14 inches.

(III) No maximum length limit.

(I) Mullet: all species (including hybrids, and subspecies).

(i) No daily bag limit.

(ii) No minimum length limit.

(iii) From October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.

(J) Shark: all species (including hybrids and subspecies).

(i) all species other than the species listed in clauses (ii) - (iv) of this subparagraph:

(I) Daily bag limit: 1.

(II) Minimum length limit: 64 inches.

(III) No maximum length limit.

(ii) Atlantic sharpnose, blacktip, and bonnethead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 24 inches.

(III) No maximum length limit.

(iii) great, scalloped, and smooth hammerhead:

(I) Daily bag limit: 1.

(II) Minimum length limit: 99 inches.

(III) No maximum length limit.

(iv) The take of the following species of sharks from the waters of this state is prohibited and they may not be possessed on board a vessel at any time:

(I) Atlantic angel;

(II) Basking;

(III) Bigeye sand tiger;

(IV) Bigeye sixgill;

(V) Bigeye thresher;

(VI) Bignose;

(VII) Caribbean reef;

(VIII) Caribbean sharpnose;

(IX) Dusky;

(X) Galapagos;

(XI) Longfin mako;

(XII) Narrowtooth;

(XIII) Night;

(XIV) Sandbar;

(XV) Sand tiger;

(XVI) Sevengill;

(XVII) Silky;

(XVIII) Sixgill;

(XIX) Smalltail;

(XX) Whale; and

(XXI) White.

(v) Except for the species listed in clause (ii) - (iv) of this subparagraph, sharks may be taken using pole and line, but must be taken by non-offset, non-stainless-steel circle hook when using natural bait.

(K) Sheepshead.

(i) Daily bag limit: No limit.

(ii) Minimum length limit: 15 inches.

(iii) No maximum length limit.

(L) Snapper.

(i) Lane.

(I) Daily bag limit: None.

(II) Minimum length limit: 8 inches.

(III) No maximum length limit.

(ii) Red.

(I) Daily bag limit: 4.

(II) Minimum length limit: 15 inches.

(III) No maximum length limit.

(IV) Red snapper may be taken using pole and line, but it is unlawful to use any kind of hook other than a circle hook baited with natural bait.

(iii) Vermilion.

(I) Daily bag limit: None.

(II) Minimum length limit: 10 inches.

(III) No maximum length limit.

(M) Triggerfish, gray.

(i) Daily bag limit: 20.

(ii) Minimum length limit: 16 inches.

(iii) No maximum length limit.

(N) Tripletail.

(i) Daily bag limit: 3.

(ii) Minimum length limit: 17 inches.

(iii) No maximum length limit.

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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Colette Barron-Bradsby
Acting General Counsel
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §§364.1 - 364.4

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §364.1, Requirements for Licensure; §364.2, Initial License by Examination; §364.3, Temporary License; and §364.4, Licensure by Endorsement. The amendments to the sections are adopted to streamline and increase the efficiency of the Board's licensing processes, including through the use of digital technology, and to reduce potential burdens for applicants.

The amendments are adopted without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4163). The rules will not be republished.

The amendments to §364.1, §364.2, and §364.4 concern the application submission criteria required for the issuance of a license. An amendment to §364.1 will allow an applicant to submit the photograph required for initial licensure in electronic form. Amendments to §364.2 and §364.4 include adding provisions that will allow the Board to verify an applicant's history of licensure in occupational therapy, rather than routinely requiring that an applicant submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. The amendments include that if the Board cannot verify the applicant's history of licensure, the applicant must submit a verification of license. The amendments concerning license verification will, therefore, result in applicants only being required to submit verifications for licenses that the Board cannot verify. Adopted amendments concerning similar requirements for the restoration of a license will also be submitted to the *Texas Register* for publication.

Additional amendments to §364.1, Requirements for Licensure, remove redundant language that already appears in another section of the Occupational Therapy Rules and include a further cleanup for consistency.

The amendments, in addition, include amendments to §364.3, Temporary License. Applicants for a temporary license must submit a Confirmation of Examination Registration and Eligibility to Examine form from the National Board for Certification in Occupational Therapy (NBCOT), which must be sent directly to the Board by NBCOT and which reflects the eligibility window in which the applicant will take the examination. Related provisions in the section include that this is a 90-day window. This examination eligibility window is set by NBCOT, which is the national testing entity recognized by the Board. The amendments remove the reference to 90 days with regard to that window and replace such with "eligibility." This change will ensure that the section will not specify a number of days that are determined by another entity, NBCOT, prior to sending the form to the Board.

The amendments to the section also include the removal of language regarding licensure in another country from §364.3(b). Board rule §364.3 requires that to be issued a temporary license, the applicant must meet all the provisions in §364.1, concerning requirements for licensure, and §364.2, concerning initial license by examination, and licensure in another country is not addressed in the sections with regard to an applicant's eligibility for licensure. To bring greater uniformity to the Occupational Therapy Rules and remove potential barriers to licensure for an applicant who would otherwise be eligible for a temporary license, the amendments include the removal of language from the provision that would prevent an applicant from obtaining a temporary license in Texas if the applicant has received a license in another country.

The current §364.3(b) also allows for temporary licensure as an occupational therapist to be available to an applicant for an occupational therapist license who has had a history of licensure or employment as an occupational therapy assistant; amendments to the section will, similarly, make temporary licensure as an occupational therapy assistant available to an applicant for an occupational therapy assistant license who has had a history of licensure or employment as an occupational therapist. The changes, likewise, are adopted to bring greater uniformity to the Occupational Therapy Rules and remove a potential barrier to temporary licensure for an applicant who otherwise would be eligible for such.

The amendments include additional cleanups to the sections.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. Specifically, the amendments to §364.1 and §364.2 are adopted under Texas Occupations Code §454.201, which requires a license under chapter 454 in order to practice occupational therapy, and adopted under Texas Occupation Code §454.202, which requires that the applicant for a license submit a written application to the Board in the form prescribed by the Board. The amendments to §364.3 are adopted under Texas Occupations Code §454.211, which authorizes the Board to provide for the issuance of a temporary license. The amendments to §364.4 are adopted under Texas Occupations Code §454.216, which authorizes the Board to issue a license by endorsement, requires that the applicant provide to the Board information regarding the status of any professional license that the applicant holds or has held in another jurisdiction, and requires the applicant to submit a current photograph that meets requirements for a United States passport.

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

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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Ralph A. Harper
Executive Director
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CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §367.1, Continuing Education. The amendments are adopted to add requirements concerning training on the prevention of human trafficking pursuant to House Bill 2059 of the 86th Regular Legislative Session in 2019. The amendments are adopted without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4166). The rule will not be republished.

House Bill 2059 requires that a health care practitioner successfully complete a training course on human trafficking prevention approved by the executive commissioner of the Health and Human Services Commission as a condition for license renewal. The Bill defines "health care practitioner" as an individual who provides direct patient care. The amendments to §367.1 and adopted amendments to other chapters of the Board rules will require the completion of human trafficking prevention training as condition for license renewal for all occupational therapy licensees. The amendments also pre-approve up to two contact hours for a human trafficking prevention training course and will allow a specific training course to be repeated for credit during a subsequent renewal period.

No comments were received regarding adoption of the amendments.

The amendments to §367.1 are adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454, and adopted under Texas Occupations Code §454.254, which authorizes the Board to require license holders to attend continuing education courses specified by the Board.

The amendments implement Texas Occupations Code §116.002 and §116.003, which require a health care practitioner to complete human trafficking prevention training as a condition of license renewal. No other statutes, articles, or codes are affected by these amendments.

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 370. LICENSE RENEWAL

40 TAC §370.2, §370.3

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §370.2, Late Renewal, and §370.3, Restoration of a Texas License. The amendments are adopted to support the Board in streamlining and increasing the efficiency of its licensing processes, including through the use of digital technology, and reduce potential burdens for applicants. The amendments also cleanup and modify requirements for the renewal of an expired license and add human trafficking prevention training requirements pursuant to House Bill 2059 of the 86th Regular Legislative Session in 2019. The amendments are adopted without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4168). The rules will not be republished.

Amendments to §370.2 include as a cleanup the replacement of the current §370.2(a) with the simplified "A renewal application is late if all the required renewal materials do not bear a postmark or electronic time-stamp showing a date prior to the expiration of the license." An additional amendment to the section concerns removing the requirement that to renew a license expired for more than 90 days, but less than one year, the individual must submit copies of the continuing education documentation. This change will reduce requirements for a late renewal and streamline the late renewal process.

Amendments to §370.3 concern the renewal of a license expired one year or more, which, in the Occupational Therapy Rules, is referred to as the restoration of a license. Amendments to the section will allow an applicant to submit the photograph required for the restoration of a license in electronic form and allow the Board to verify an applicant's history of licensure in occupational therapy, rather than routinely requiring that an applicant submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. The amendments include that if the Board cannot verify the applicant's history of licensure, the applicant must submit a verification of license. The amendments concerning license verification will, therefore, result in applicants only being required to submit verifications for licenses that the Board cannot verify. Adopted amendments in other sections concerning similar requirements for initial licensure will also be submitted to the *Texas Register* for publication.

A further amendment to §370.3 concerns reducing the number of continuing education hours required for the restoration of a license expired at least one year, but less than two years. Previously, the Occupational Therapy Rules required that to renew a license expired less than one year, the individual must complete thirty hours of continuing education. Recent amendments to other rule sections changed that amount to twenty-four hours. The changes to §370.3 are a cleanup to coincide with such changes by reducing the required continuing education hours for restoration from forty-five to thirty-six hours. The amendments include further cleanups.

An additional modification to the section includes that certain restoration requirements for an individual whose license is expired two years or more must be completed no more than two years prior to the submission of the application. The amendment is adopted to specify a time frame during which the requirements must be met in the corresponding subsection.

Further amendments to §370.3 concern adding provisions requiring that individuals complete training on the prevention of human trafficking as a requirement for license restoration. House Bill 2059 of the 86th Regular Legislative Session in 2019 requires that a health care practitioner successfully complete a training course on human trafficking approved by the executive commissioner of the Health and Human Services Commission as a condition for license renewal, and in the bill, "health care practitioner" refers to an individual who provides direct patient care. The amendments to §370.3 and further adopted amendments

to the Occupational Therapy Rules submitted for publication in the *Texas Register* will add the completion of this training as a requirement for license renewal for all occupational therapy licensees.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. Specifically, the amendments to §370.2 and §370.3 are adopted under Texas Occupations Code §454.252, which requires that a person whose license has been expired less than one year may renew the license by paying the renewal fee and late fee set by the Executive Council of Physical Therapy and Occupational Therapy Examiners and which authorizes the Board to reinstate a license expired one year or more. The amendments to §370.3 are adopted under Texas Occupations Code §454.253, which authorizes the Board to renew the expired license of an individual licensed in another state and the amendments to §370.3 are adopted under Texas Occupations Code §454.254, which authorizes the Board to require license holders to attend continuing education courses specified by the Board.

The amendments to §370.3 implement Texas Occupations Code §116.002 and §116.003, which require a health care practitioner to complete human trafficking prevention training as a condition of license renewal. No other statutes, articles, or codes are affected by these amendments.

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CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §371.1, Inactive Status, and §371.2, Retired Status. The amendments to the sections are adopted to cleanup and clarify the sections and to reduce the requirements to initiate retired status. In addition, amendments to §371.2 are adopted to add requirements concerning training on the prevention of human trafficking pursuant to House Bill 2059 of the 86th Regular Legislative Session in 2019. Cleanups and clarifications to the sections include amendments to provisions concerning fees to add greater uniformity and clarity to the manner in which such are referenced. The amendments are adopted without changes to the proposed text as published in the June 19, 2020, issue of the *Texas Register* (45 TexReg 4172). The rules will not be republished.

Amendments to §371.2 include changes concerning reducing the number of hours of continuing education required to initiate retired status. Rather than requiring that the individual complete the same number of continuing education hours required to renew an active or inactive status license, the amendments will instead require that to initiate retired status, the individual must complete six hours of continuing education, which is the number of hours required to renew a license already on retired status. This change will reduce potential barriers for licensees concerning the initiation of retired status. Concomitant with these changes, requirements to return a license to active status have been revised so that a licensee who has been on retired status less than one year must complete the remainder of continuing education hours required for the renewal of a license on active status.

Further amendments to §371.2 concern the addition of requirements concerning training on human trafficking. House Bill 2059 of the 86th Regular Legislative Session requires that a health care practitioner successfully complete a training course on human trafficking approved by the executive commissioner of the Health and Human Services Commission as a condition for license renewal, and in the bill, "health care practitioner" refers to an individual who provides direct patient care. The amendments to §371.2 and adopted amendments to other chapters of the Occupational Therapy Rules submitted for publication in the *Texas Register* will add the completion of this training as a requirement for license renewal for all occupational therapy licensees.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under chapter 454. Specifically, the amendments to §371.1 are adopted under Texas Occupations Code §454.212, which allows for the Board to provide for a license holder to place the holder's license on inactive status. Amendments to §371.2 are adopted under Texas Occupations Code §454.254, which authorizes the Board to require license holders to attend continuing education courses specified by the Board.

The amendments to §371.2 implement Texas Occupations Code §116.002 and §116.003, which require a health care practitioner to complete human trafficking prevention training as a condition of license renewal. The amendments to §371.2 implement Texas Occupations Code §112.051, which requires each licensing entity to adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care. No other statutes, articles, or codes are affected by these amendments.

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 22, Procedural Rules, under Texas Government Code §2001.039, *Agency Review of Existing Rules.* Chapter 22 provides a system of procedures for practice before the commission intended to promote the just and efficient disposition of proceedings and public participation in the decision-making process. Chapter 22 governs the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to the State Office of Administrative Hearings, whether instituted by order of the commission or by the filing of an application, complaint, petition or any other pleading. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov. Project Number 50741 is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section in Chapter 22 continue to exist. In addition, the commission welcomes comments on any modifications interested persons believe would improve the rules.

If it is determined during this review that any section of Chapter 22 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 22 has no effect on the sections as they currently exist.

Comments on the review of Chapter 22 may be filed through the interchange on the commission's website as long as the commission's order filed in Docket No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019,* is in effect. Should the commission's order entered into in Docket No. 50664 no longer be in effect, then parties may file written comments by submitting sixteen copies to the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas 78701 or mailed to P.O. Box 13326, Austin, Texas 78711-3326, by September 4, 2020. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 50741.

The notice of intention to review Chapter 22 is proposed under the Public Utility Regulatory Act, Tex. Util. Code §14.002 (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings; and Texas Government Code §2001.039, which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and 14.052; Texas Government Code §2001.039.

TRD-202003125
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: July 31, 2020

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 120, Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/gcerules; by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§120.1 Authority

§120.10 Definitions

§120.20 Applications

§120.21 Dyslexia Therapist Licensing Requirements

§120.22 Dyslexia Practitioner Licensing Requirements

§120.23 Examination

§120.24 Requirements for Training Programs

§120.25 Continuing Education

§120.26 Renewal

§120.65 Dyslexia Therapists and Practitioners Advisory Committee; Membership

§120.66 Duties

§120.67 Terms; Vacancies

§120.68 Officers

§120.69 Meetings

§120.70 Responsibilities of License Holders

§120.80 Fees

§120.90 Professional Standards and Basis for Disciplinary Action

§120.95 Complaints

Issued in Austin, Texas on August 5, 2020

TRD-202003175
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Filed: August 5, 2020

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Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code, Chapter 81, Insurance. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Proposed amendments to Chapter 81 were published on July 10, 2020, in the *Texas Register* (45 TexReg 4711), and a correction notice was published on July 24, 2020, in the *Texas Register* (45 TexReg 5224).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.texas.gov.* The deadline for receiving comments is Monday, September 14, 2020. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-202003092
Paula A. Jones
Deputy Executive Director and General Counsel
Employees Retirement System of Texas
Filed: July 29, 2020

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Adopted Rule Reviews

Texas Board of Occupational Therapy Examiners

Title 40, Part 12

The Texas Board of Occupational Therapy Examiners adopts the review of 40 Texas Administrative Code §367.4, Process for Selecting a Peer Organization to Evaluate and Approve Continuing Education Courses, in accordance with Texas Government Code §2001.039. The notice of intent to review §367.4, along with all other sections of the Board's rules, was published in the March 20, 2020, issue of the *Texas Register* (45 TexReg 2055).

No comments were received on the proposed rule review. However, Board rule §367.4, Process for Selecting a Peer Organization to Evaluate and Approve Continuing Education Courses, was identified by the Regulatory Compliance Division of the Office of the Governor as possibly having an anticompetitive market effect. The Board has obtained the approval of the Regulatory Compliance Division of the rule after the completion of the division's review of such.

The Board has assessed whether the reasons for adopting §367.4 continue to exist. As a result of the review, the Board finds the reasons for adopting the rule continue to exist and readopts the rule in accordance with the requirements of Texas Government Code §2001.039.

Notice of the adoption of the review of the Board's remaining rule sections was published in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3337).

This concludes the review of all sections of the Board's rules.

TRD-202003119
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Filed: July 31, 2020

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/10/20 - 08/16/20 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 08/10/20 - 08/16/20 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 08/01/20 - 08/31/20 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 08/01/20 - 08/31/20 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

TRD-202003138
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 4, 2020

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Texas Education Agency

Public Notice: Revised Public Comment Period for State Board of Education Rule Proposals

Texas Education Agency (TEA) published the following proposals in the July 31, 2020 issue of the *Texas Register:* Proposed New 19 TAC Chapter 61, School Districts, Subchapter B, Special Purpose School Districts, §61.101, Applicability of State Law for Special Purpose School Districts (45 TexReg 5287); Proposed Amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.1, Essential Knowledge and Skills, and §74.3, Description of a Required Secondary Curriculum (45 TexReg 5290); and Proposed New 19 TAC Chapter 120, Other Texas Essential Knowledge and Skills, Subchapter A, Character Traits (45 TexReg 5293).

TEA is revising the end date of the public comment period to August 31, 2020, to allow the State Board of Education to consider the proposals for second reading and final adoption at its September 1-2, 2020 meeting.

Further Information. For clarifying information about this notice, contact Rulemaking, TEA, (512) 475-1497.

Issued in Austin, Texas, on July 31, 2020.

TRD-202003117
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 31, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 15, 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 commissions 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 commissions 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 **September 15, 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: Arcosa LWS, LLC fka TRNLWS, LLC; DOCKET NUMBER: 2019-0684-AIR-E; IDENTIFIER: RN100211283; LOCATION: Streetman, Navarro County; TYPE OF FACILITY: expanded shale and clay lightweight aggregate production; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 49047, General Conditions Number 12 and Special Conditions Number 7, Federal Operating Permit (FOP) Number O1117, General Terms and Conditions (GTC) and Special Terms and Conditions Number 10, and Texas Health and Safety Code (THSC), §382.085(b), by failing to cover the top and sides of all conveyor belts and enclose all conveyor belt transfer points; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1117, GTC, and THSC, §382.085(b), by failing to report all instances of deviations;

and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1117, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: $39,535; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $15,814; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Bellaire; DOCKET NUMBER: 2019-0042-MWD-E; IDENTIFIER: RN101721538; LOCATION: Bellaire, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(k) and §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010550001, Operational Requirements Number 9 and Other Requirements Number 1, by failing to ensure that each shift is operated by an operator-in-charge who is licensed at not less than one level below the category of the facility; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Eagle Sindh Incorporated dba Ross 2; DOCKET NUMBER: 2020-0582-PST-E; IDENTIFIER: RN102035151; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2020-0751-AIR-E; IDENTIFIER: RN106102569; LOCATION: Pearsall, Frio County; TYPE OF FACILITY: natural gas compression station; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 95313, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $938; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Harris County Fresh Water Supply District 45; DOCKET NUMBER: 2020-0404-PWS-E; IDENTIFIER: RN102944055; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined by 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 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 P0181 for the 2019 calendar year; PENALTY: $200; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Joe Young; DOCKET NUMBER: 2020-0765-WR-E; IDENTIFIER: RN111008322; LOCATION: Millsap, Parker County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain prior authorization prior to diverting, storing, importing, and using state water, or beginning construction of any work designed for the storage, taking or diversion of water; PENALTY: $875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Jose Alaniz; DOCKET NUMBER: 2020-0704-WOC-E; IDENTIFIER: RN108316712; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: LUCKEY2 BUSINESS LLC dba Stop-N-Pik; DOCKET NUMBER: 2020-0491-PST-E; IDENTIFIER: RN102345774; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $2,645; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: MightyWash Operations, L.L.C.; DOCKET NUMBER: 2020-0682-SLG-E; IDENTIFIER: RN110854213; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: car wash; RULES VIOLATED: 30 TAC §312.142(a), by failing to apply for and obtain a registration prior to transporting grit trap waste; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: OILTON RURAL WATER SUPPLY CORPORATION THE STATE OF TEXAS; DOCKET NUMBER: 2020-0522-PWS-E; IDENTIFIER: RN101195683; LOCATION: Oilton, Webb County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failed to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1, 2016 - December 31, 2016, and January 1, 2017 - December 31, 2019, monitoring periods; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2012 - December 31, 2014, and January 1, 2015 - December 31, 2015, monitoring periods and regarding the failure to submit a Disinfectant Level Quarterly Operating Report for the second quarter of 2016; and 30 TAC §290.272 and §290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report for the calendar year 2018; PENALTY: $635; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: OXY USA Incorporated; DOCKET NUMBER: 2020-0205-AIR-E; IDENTIFIER: RN103758470; LOCATION: Seminole, Gaines County; TYPE OF FACILITY: oil and gas plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 8414, PSDTX328M3, and PSDTX485M1, Special Conditions Number 1, Federal Operating Permit Number O627, General Terms and Conditions and Special

Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,800; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: Quik-Way Operating, LLC dba Texan 2 Valero; DOCKET NUMBER: 2020-0356-PST-E; IDENTIFIER: RN102823598; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,934; ENFORCEMENT COORDINATOR: Tyler Smith, (512) 239-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Scott W. Gray dba Iwanda Mobile Home Park; DOCKET NUMBER: 2020-0228-PWS-E; IDENTIFIER: RN101245751; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director (ED) by the tenth day of the month following the end of each quarter for the first and second quarters of 2019; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for arsenic during the third quarter of 2016; and 30 TAC §290.271(b) and §290.274(a) and (c) and TCEQ Agreed Order Docket Number 2018-0352-PWS-E, Ordering Provision Numbers 2.a.ii and 2.b.ii, 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 on the CCR is correct and consistent with compliance monitoring data for calendar year 2018; PENALTY: $443; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: SOUTHWESTERN MOTOR TRANSPORT, Incorporated; DOCKET NUMBER: 2020-0686-PST-E; IDENTIFIER: RN102431798; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: ST. ELIAS ANTIOCHIAN ORTHODOX CHURCH; DOCKET NUMBER: 2020-0671-EAQ-E; IDENTIFIER: RN110407129; LOCATION: Austin, Williamson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §213.4(j) and Edwards Aquifer Protection Plan Number 11001132, Standard Conditions Number 6, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $938; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: P.O. Box 13087 Austin, Texas 78711-3087, (512) 339-2929.

(16) COMPANY: Sunoco, LLC dba Ozona Fuellock; DOCKET NUMBER: 2020-0587-PST-E; IDENTIFIER: RN102036654; LOCATION: Ozona, Crockett County; TYPE OF FACILITY: fleet refueling; 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: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(17) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2020-0520-PST-E; IDENTIFIER: RN101790137; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $3,750; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $3,000; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: TRISHUL BUSINESS GROUP LLC dba Navy Food Mart; DOCKET NUMBER: 2020-0680-PST-E; IDENTIFIER: RN102892643; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: WTG Jameson, LP; DOCKET NUMBER: 2020-0493-AIR-E; IDENTIFIER: RN101246478; LOCATION: Silver, Coke County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 9941 and PSDTX687, Special Conditions Number 1, Federal Operating Permit (FOP) Number O865, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O865, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and PENALTY: $7,563; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(20) COMPANY: Xochitl Garcia Chio; DOCKET NUMBER: 2019-1163-PST-E; IDENTIFIER: RN102959632; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: retail fueling facility and convenience store; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the facility; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-202003135

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 4, 2020

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for an Air Quality Permit: Air Quality Permit Numbers 8996 and PSDTX454M4

APPLICATION AND PRELIMINARY DECISION. Holcim (US) Inc., 1800 Dove Lane, Midlothian, Texas 76065-4435, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Air Quality Permit 8996 and Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX454M4, which would authorize modification to the Portland Cement Plant at 1800 Dove Lane, Midlothian, Ellis County, Texas 76065. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This application was submitted to the TCEQ on June 3, 2019. The existing facility will emit the following air contaminants in a significant amount: carbon monoxide and particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less. In addition, the facility will emit the following air contaminants: hazardous air pollutants, nitrogen oxides, organic compounds, sulfuric acid, and sulfur dioxide.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

$PM_{2.5}$

Maximum Averaging Time	Maximum Increment Consumed ($\mu g/m^3$)	Allowable Increment ($\mu g/m^3$)
24-hour	2.7	9
Annual	0.4	4

The executive director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Dallas/Fort Worth regional office, and at the A H Meadows Public Library, 922 South 9th Street, Midlothian, Texas 76065, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Dallas/Fort Worth Regional Office, 2309 Gravel Dr, Fort Worth, Texas.

INFORMATION AVAILABLE ONLINE. These documents are accessible through the Commission's Web site at www.tceq.texas.gov/goto/cid: the executive director's preliminary decision which includes the draft permit, the executive director's preliminary determination summary, the air quality analysis, and, once available, the executive director's response to comments and the final decision on this application. Access the Commissioners' Integrated Database (CID) using the above link and enter the permit number for this application. The public location mentioned above provides public access to the internet. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.511111&lng=-96.973611&zoom=13&type=r.

PUBLIC COMMENT/PUBLIC MEETING. The TCEQ will hold a public meeting for this application. You may submit public comments on this application or request a contested case hearing to the TCEQ Office of the Chief Clerk at the address below. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting is not a contested case hearing. The TCEQ will consider all public comments in developing a final decision on the application. The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application. However, informal comments made during the Informal Discussion Period will not be considered by the TCEQ Commissioners before reaching a decision on the permit and no formal response will be made to the informal comments. During the Formal Comment Period, members of the public may state their formal comments into the official record. A written response to all formal comments will be prepared by the Executive Director and considered by the Commissioners before they reach a decision on the permit. A copy of the response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this application and who provides a mailing address. Only relevant and material issues raised during the formal comment period can be considered if a contested case hearing is granted.

The Public Meeting is to be held:

Thursday, August 27, 2020 at 7:00 p.m.

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 371-675-299. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (415) 655-0060 and enter access code 682-351-930. 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.

Persons with disabilities who need special accommodations at the public 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.

You may submit additional written public comments within 30 days of the date of newspaper publication of this notice in the manner set forth in the AGENCY CONTACTS AND INFORMATION paragraph below. After the deadline for public comment, the executive director will consider the comments and prepare a response to all public comment. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. **A person who may be affected by emissions of air contaminants from the facility is entitled to request a hearing. A contested case hearing request must include the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" (4) a specific description of how you would be adversely affected by the application and air emissions from the facility in a way not common to the general public; (5) the location and distance of your property relative to the facility; (6) a description of how you use the property which may be impacted by the facility; and (7) a list of all disputed issues of fact that you submit during the comment period. If the request is made by a group or association, one or more members who have standing to request a hearing must be identified by name and physical address. The interests the group or association seeks to protect must also be identified. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing within 30 days following this notice to the Office of the Chief Clerk, at the address provided in the information section below.**

A contested case hearing will only be granted based on disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decisions on the application. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. Issues that are not submitted in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. If a timely contested case hearing request is not received or if all timely contested case hearing requests are withdrawn, the executive director may issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the CID. If any timely hearing requests are received and not withdrawn, the executive director will not issue final approval of the permit and will forward the application and requests to the Commissioners for their consideration at a scheduled commission meeting.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Holcim (US) Inc. at the address stated above or by calling Mr. Daniel Carnes, Environmental Manager at (972) 923-5830.

Notice Issuance Date: August 3, 2020

TRD-202003168
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Enforcement Orders

An agreed order was adopted regarding AHRS ENTERPRISES, INC., Docket No. 2018-0844-PST-E on August 4, 2020, assessing $7,442 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cuvee Coffee, LLC, Docket No. 2018-1625-WQ-E on August 4, 2020, assessing $563 in administrative penalties with $112 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Abdulhai Majid dba Joes Food Mart, Docket No. 2019-1014-PST-E on August 4, 2020, assessing $6,617 in administrative penalties with $1,323 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PLAINS BAPTIST ASSEMBLY, Docket No. 2019-1142-PWS-E on August 4, 2020, assessing $1,410 in administrative penalties with $282 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 Double Diamond Utilities Co., Docket No. 2019-1178-IWD-E on August 4, 2020, assessing $4,388 in administrative penalties with $877 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SR-KRUPA, INC. dba Lucky Mart 1, Docket No. 2019-1230-PST-E on August 4, 2020, assessing $3,563 in administrative penalties with $712 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G4J Materials LLC, Docket No. 2019-1273-WQ-E on August 4, 2020, assessing $4,125 in administrative penalties with $825 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding D.R. Horton - Texas, Ltd., Docket No. 2019-1350-WQ-E on August 4, 2020, assessing $2,625 in administrative penalties with $525 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 Aqua Texas, Inc., Docket No. 2019-1400-MWD-E on August 4, 2020, assessing $4,125 in administrative penalties with $825 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DG RV Properties, LLC, Docket No. 2019-1468-PWS-E on August 4, 2020, assessing $3,674 in administrative penalties with $734 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding COBRA WATER WELL DRILLING LLC, Docket No. 2019-1489-WR-E on August 4, 2020, assessing $350 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.

An agreed order was adopted regarding David T. Hindman dba Canyon Cove RV Park and Debra J. Hindman dba Canyon Cove RV Park, Docket No. 2019-1505-PWS-E on August 4, 2020, assessing $900 in administrative penalties with $180 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2019-1520-MWD-E on August 4, 2020, assessing $7,000 in administrative penalties with $1,400 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EP SHARP INVESTMENTS, LLC, Docket No. 2019-1619-MLM-E on August 4, 2020, assessing $2,825 in administrative penalties with $565 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Livingston Water Supply Corporation, Docket No. 2019-1757-PWS-E on August 4, 2020, assessing $1,897 in administrative penalties with $379 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, 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 Wills Point, Docket No. 2020-0099-PWS-E on August 4, 2020, assessing $600 in administrative penalties with $120 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 Medina Children's Home, Docket No. 2020-0141-PWS-E on August 4, 2020, assessing $6,300 in administrative penalties with $1,260 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blue Bell Manor Utility Co., Inc., Docket No. 2020-0195-PWS-E on August 4, 2020, assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Jée Willis, 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 Galveston County, Docket No. 2020-0200-PST-E on August 4, 2020, assessing $5,512 in administrative penalties with $1,102 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 Town of Lakewood Village, Docket No. 2020-0201-PWS-E on August 4, 2020, assessing $105 in administrative penalties with $21 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Erling Johnson, LLC, Docket No. 2020-0207-PWS-E on August 4, 2020, assessing $1,735 in administrative penalties with $1,151 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 MarkWest Oklahoma Gas Company, L.L.C., Docket No. 2020-0211-AIR-E on August 4, 2020, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, 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 Valero Partners Lucas, LLC, Docket No. 2020-0232-AIR-E on August 4, 2020, assessing $1,000 in administrative penalties with $200 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas Environmental, LLC, Docket No. 2020-0233-MWD-E on August 4, 2020, assessing $3,125 in administrative penalties with $625 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Charles Johnson, Docket No. 2020-0251-WQ-E on August 4, 2020, assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Pedro Guity, Docket No. 2020-0257-WOC-E on August 4, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epifanio Villarreal, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gene Hayman, Docket No. 2020-0264-WOC-E on August 4, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mason, Docket No. 2020-0266-MWD-E on August 4, 2020, assessing $3,500 in administrative penalties with $700 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Texas Pipeline, Ltd., Docket No. 2020-0270-AIR-E on August 4, 2020, assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding V A V Investments, LLC, Docket No. 2020-0302-PWS-E on August 4, 2020, assessing $100 in administrative penalties with $20 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 Trend Gathering & Treating, LLC, Docket No. 2020-0313-AIR-E on August 4, 2020, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RIVER OAKS WATER SUPPLY CORPORATION, Docket No. 2020-0314-PWS-E on August 4, 2020, assessing $52 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202003169
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40315

Application. City of Dalhart, P.O. Box 2005, Dalhart, Texas 79022-2005 has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40315, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, City of Dalhart Municipal Solid Waste Landfill Transfer Station, will be located Macky Rd. (Nortex Rd.) & U.S. HWY. 87 North (3.9 Miles NW of Dalhart) 79022, in Dallam County. The Applicant is requesting authorization to transfer municipal solid waste that includes household waste, yard waste, commercial waste, industrial waste (non-hazardous Class 2 and Class 3), construction demolition waste, and some special wastes. The registration application is available for viewing and copying at the Dalhart City Hall, 205 Rock Island Avenue, Dalhart, Texas 79022, Dallam County and may be viewed online at http://www.dalharttx.gov/page/Sanitation. 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/08aimG. For the exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General

information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from City of Dalhart at the address stated above or by calling Mr. James Stroud at (806) 244-5511.

TRD-202003160
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of Correction - Notice of Public Comment on Proposed Amendments to 30 TAC Chapter 30

In the July 31, 2020, issue of the *Texas Register* (45 TexReg 5429), the Texas Commission on Environmental Quality (commission) published a Notice of Public Comment on Proposed Amendments to 30 TAC Chapter 30. The notice was missing §30.34 in the list of amended sections. The error is as submitted by the commission.

On page 5429, first paragraph, first sentence should be corrected to read as, "The Texas Commission on Environmental Quality (commission) is accepting written comments regarding proposed amendments to §§30.20, 30.24, 30.33, 30.34, 30.36, 30.81, 30.95, 30.129, and 30.402, and the proposal of new §30.29 of 30 Texas Administrative Code (TAC) Chapter 30, Occupational Licenses and Registration."

For questions concerning this error, please contact Gwen Ricco at (512) 239-2678.

TRD-202003156
Patricia Duron
Program Supervisor, Texas Register Rule Development Team
Texas Commission on Environmental Quality
Filed: August 4, 2020

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Notice of Correction to Agreed Order Number 5

In the June 5, 2020, issue of the *Texas Register* (45 TexReg 3897), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 5, for DG RV Properties, LLC, Docket Number 2020-0226-PWS-E. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$300."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202003136
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 4, 2020

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Notice of District Petition: TCEQ Internal Control No. D-03092020-012

Notice issued July 31, 2020

HIJO, LTD., a Texas limited partnership, and Sutton Field Investments, LLC, a Texas limited liability company (Petitioners) filed a petition for creation of Decherd Ranch Municipal Utility District No. 1 of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 349.490 acres located within Denton County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial waste; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $27,580,000 (including $17,800,000 for utilities plus $9,780,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al

(512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202003164
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of District Petition: TCEQ Internal Control No. D-05222020-049

Notice issued July 31, 2020

Poetry Road, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Poetry Road Municipal Utility District No. 1 of Rockwall County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 79.655 acres located within Rockwall County, Texas; and (4) none of the land within the proposed district within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of the boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $12,810,000 (including $8,180,000 for water, wastewater, and drainage plus $4,630,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition.

Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202003159
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 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 **September 15, 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 September 15, 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: Billy R. Hamrick; DOCKET NUMBER: 2017-0960-MSW-E; TCEQ ID NUMBER: RN109124099; LOCATION: 159 Private Road, Aquilla, Hill County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED:

30 TAC §330.15, by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Epic Renewables, Inc. and William Michael Bruce; DOCKET NUMBER: 2018-0032-MLM-E; TCEQ ID NUMBER: RN106330459; LOCATION: 345 County Road 792, Warehouse Number 3, Suite C, Evadale, Jasper County; TYPE OF FACILITY: industrial and hazardous waste facility; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §335.4(1), by failing to prevent the unauthorized discharge of industrial waste into or adjacent to water in the state; and 30 TAC §327.3(b), by failing to notify the TCEQ within 24 hours of becoming aware of a reportable discharge or spill of a hazardous substance into the environment in a quantity equal to or greater than the reportable quantity in any 24-hour period; PENALTY: $9,850; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: LAM DAO LLC dba A & D Discount; DOCKET NUMBER: 2018-0931-PST-E; TCEQ ID NUMBER: RN101435097; LOCATION: 801 North Taylor Street, Amarillo, Potter County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.

TRD-202003139
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 4, 2020

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 15, 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 the 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 September 15, 2020.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Traveling Tiger Centers LLC; DOCKET NUMBER: 2019-1237-PWS-E; TCEQ ID NUMBER: RN101180529; LOCATION: intersection of United States Interstate Highway 10 East and Highway 34 near Fort Hancock, Hudspeth County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(j), by failing to use all chemicals and any additional or replacement process media for treatment of water supplied by the facility that conforms to the American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.42(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's three ground storage tanks; and 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's four pressure tanks; PENALTY: $1,447; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-202003140
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 4, 2020

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Notice of Public Comment on Proposed Revisions to 30 TAC Chapters 39, 50, 55, and 331

The Texas Commission on Environmental Quality (commission) is accepting written comments regarding proposed amendments to §§39.403, 50.113, 55.101, 55.201, 331.2, 331.5, 331.7, 331.47, 331.64, and 331.121, and repealed §331.17 and §331.18 of 30 Texas Administrative Code (TAC) Chapter 39, Public Notice, Chapter 50, Action on Applications and Other Authorizations, Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, and Chapter 331, Underground Injection Control.

Consistent with other commission rules and the United States Environmental Protection Agency's regulations, the proposed rulemaking would amend and repeal rules for pre-injection units associated with nonhazardous, noncommercial injection wells to remove the requirements to permit or register pre-injection units under Chapter 331 and would result in a streamlined underground injection control permit application process.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* 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 2016-022-331-WS. **The comment period closes September 15, 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 Tamara Young, Underground Injection Control Permits Section, (512) 239-6582.

TRD-202003107
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 31, 2020

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater: New Permit No. WQ0015821001

APPLICATION. City of Granbury, P.O. Box 969, Granbury, Texas 76048, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015821001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day.

The facility will be located at 3121 Old Granbury Road, Granbury, in Hood County, Texas 76049. The treated effluent will be discharged to an unnamed tributary of Rucker Creek; thence to Rucker Creek; thence to Lake Granbury in Segment No. 1205 of the Brazos River Basin. The unclassified receiving water uses are limited aquatic life use for unnamed tributary of Rucker Creek, and high aquatic life use for Rucker Creek. The designated uses for Segment No. 1205 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Rucker Creek or Lake Granbury, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This 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. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.739444%2C32.452777&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, September 10, 2020 at 7:00 p.m.

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 850-659-499. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (415) 655-0052 and enter access code 455-162-111. 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 http://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Granbury City Hall, 116 West Bridge Street, Granbury, Texas. Further information may also be obtained from City of Granbury at the address stated above or by calling Mr. Rick Crownover at (817) 573-7030, Ext. 1699.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: July 29, 2020

TRD-202003166

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of Public Meeting on an Application for a Water Use Permit: Application No. 13631

RR 417, LLC, has applied for a water use permit to authorize the maintenance of two existing reservoirs on Commissioners Creek, Nueces River Basin for recreational purposes in Bandera County. RR 417, LLC, also seeks authorization to use the bed and banks of Commissioners Creek to convey 40 acre-feet of groundwater per year for subsequent diversion of 10 acre-feet of groundwater for agricultural and recreational purposes in Bandera County and to maintain the reservoirs with groundwater. The application does not request a new appropriation of water. More information on the application and how to participate in the permitting process is given below.

APPLICATION. RR 417, LLC, 9 South Cheska Lane, Houston, Texas 77024, Applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code (TWC) §§11.121, 11.042, 11.143 and TCEQ Rules Title 30 Texas Administrative Code (TAC) §§295.1, et seq. Notice is being published and mailed to the water rights holders of record in the Nueces River Basin pursuant to 30 TAC §295.151, and mailed to the Bandera County River Authority & Groundwater District pursuant to 30 TAC §295.153(b)(3).

RR 417, LLC, seeks a water use permit to maintain two existing dams and reservoirs on Commissioners Creek, tributary of Hondo Creek, tributary of the Frio River, Nueces River Basin with a combined normal operating capacity of 29 acre-feet of water for recreational purposes in Bandera County.

Reservoir No. 1 (Waterfront Pond) has a point on the centerline of the dam located at Latitude 29.667189° N, Longitude 99.231489° W, and Reservoir No. 2 (Canoe Pond) has a point on the centerline of the dam located at Latitude 29.668342° N, Longitude 99.229550° W in Bandera County.

Applicant provided evidence of an alternate source to maintain the reservoirs being groundwater from the Trinity Aquifer.

Applicant also seeks authorization to use the bed and banks of Commissioners Creek to convey 40 acre-feet of groundwater.

Applicant seeks to discharge the 40 acre-feet per year of groundwater at a maximum rate of 0.089 cfs (40 gpm) into the reservoirs and subsequently divert 10 acre-feet of the discharged groundwater from the reservoirs at a maximum diversion rate of 0.133 cfs (50 gpm) for agricultural purposes to irrigate 10 acres of land in Bandera County and for recreational purposes.

Ownership of the lands to be inundated and irrigated is evidenced by *Special Warranty Deeds* recorded as Document No. 00217978, Vol. 1068, pp. 176-184 in the official records of Bandera County.

The Applicant indicates all reservoirs, diversion points, and discharge points are located within ZIP code 78883.

The application and partial fees were received on September 5, 2019. Additional information and fees were received on September 17, and October 7, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 8, 2019.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, maintaining an alternate source of water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. 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 is encouraged to ask questions of the applicant and TCEQ staff concerning the permit application and the Executive Director's recommendations, but the comments and questions submitted orally during the Informal Discussion Period will not be considered by the Commissioners and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period, members of the public may state their formal comments orally into the official record. The Executive Director will subsequently summarize the formal comments and prepare a written response which will be considered by the Commissioners before they reach a decision on the application. The Executive Director's written response will be available to the public online or upon request. The public comment period on this application concludes at the close of the public meeting.

The Public Meeting is to be held:

Thursday, September 3, 2020 at 7:00 p.m.

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 610-648-323. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (914) 614-3221 and enter access code 822-638-021. 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 public meeting. Citizens may mail their comments to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or submit them electronically at http://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 13631 in the search field before the public comment period closes. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

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.

Issued: July 31, 2020

TRD-202003161

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment: Proposed Permit No. 420B

Application. City of Colorado City, P.O. Box 912, Colorado City, Mitchell County, Texas 79512, a municipal solid waste processing and disposal landfill, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major permit amendment to authorize a lateral expansion of the Colorado City Municipal Landfill. The facility is located at 222 East County Road 141, Colorado City, Texas 79512 in Mitchell County, Texas. The TCEQ received this application on June 26, 2020. The permit application is available for viewing and copying at the Colorado City Hall, 180 West 3rd, Colorado City, Texas 79512. 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/1ufTje0.* For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at *www14.tceq.texas.gov/epic/eComment/* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at *www.tceq.texas.gov/goto/pep.* Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from the City of Colorado City at the address stated above or by calling Mr. Dave Hoover, City Manager at (325) 728-3464.

TRD-202003165
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of Water Quality Application

The following notice was issued on July 27, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin

Texas 78711-3087 WITHIN 30 DAYS OF THIS NOTICE ISSUED IN THE *TEXAS REGISTER.*

INFORMATION SECTION

The Texas Commission on Environmental Quality has initiated a minor amendment of the Texas Pollutant Discharge Elimination System Permit No. WQ0013355001 to correct typographical errors in the effluent concentrations for the 24-hour acute biomonitoring requirements in the permit. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,350,000 gallons per day. The facility is located at 902 Tara Boulevard, Richmond in Fort Bend, County, Texas 77469.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003162
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 2020

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Notice of Water Rights Application

Notices issued July 29, 2020

APPLICATION NO. 13498; WBCCI, LLC, Applicant, P.O. Box 66428, Houston, Texas 77266, has applied for a Temporary Water Use Permit to authorize the diversion and use of not to exceed 10 acre-feet of water within a three-year period from a point on an unnamed tributary of Mill Creek, San Jacinto River Basin for industrial purposes in Montgomery County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 25, 2018. Additional information and fees were received on September 4, 2018. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 21, 2019. The Executive Director has completed the technical review of the application and prepared a draft temporary water use permit. The temporary draft permit, if granted, would include special conditions, including, but not limited to stream flow restrictions. The application, technical memoranda, and Executive Director's draft temporary permit are available for viewing on the TCEQ web page at: *www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice.* Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by August 17, 2020.

To view the complete issued notice, view the notice on our web site at *www.tceq.texas.gov/agency/cc/pub_notice.html* or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at *www.tceq.texas.gov.* Si desea información en español, puede llamar al (800) 687-4040.

TRD-202003163
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 5, 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, 2019

Clinton A. Bedsole, 8449 Plymouth Lane, Frisco, Texas 75034

Deadline: 8 Day Pre-Election Report due February 24, 2020

Jorge Artalejo, 2914 Lebanon, El Paso, Texas 79930

Carey F. Lashley Jr., 7810 Candle Ln., Houston, Texas 77071

Jenifer Rene Pool, P.O. Box 572211, Houston, Texas 77257

TRD-202003143
Anne Peters
Executive Director
Texas Ethics Commission
Filed: August 4, 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 July 20, 2020 to July 31, 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, August 7, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, September 6, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Targa Downstream, LLC

Location: The project site is located in Buffalo Bayou (Houston Ship Channel (HSC), at Targa Galena Park Facility, 12510 American Petroleum Road, in Galena Park, Harris County Texas.

Latitude & Longitude (NAD 83): 29.740925, -95.207850

Project Description: The applicant requests to modify an existing Department of the Army Permit. The applicant proposes to remove and replace an existing Barge Dock, designated Barge Dock 3. The project includes the demolition and removal of the existing Barge Dock 3 and associated support piles, removal of 6 existing mooring dolphins, relocation of an existing mooring dolphin, installation of 8 new 48-inch-diameter mooring dolphins, construction of the proposed Barge Dock 3 including a 50-foot-wide by 100-foot-long platform and a 12-foot-wide by 20-foot-long approach trestle, supported by twenty-seven 18-inch-square concrete piles, installation of two 16-inch-diameter pipe rack support piles, and the installation of approximately 439 linear feet of bulkhead wall including the discharge of approximately 50 cubic yards of material located below the mean high tide (MHT) line to backfill behind the bulkhead.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1993-01995. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 20-1288-F1

Applicant: City of Port Aransas

Location: The project site is located at the site of the former Brundrett Memorial Pier in the Corpus Christi Ship Channel at the north end of Station Street in Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.841881, - 97.058330

Project Description: The applicant proposes to construct a 185-foot-long by 11-foot-wide pier with a 128- by 11-foot T-head to replace a pier originally permitted for this location on 12 January 1966 (Permit 6701). The pier would be for public use. The original pier was removed in its entirety under a Nationwide Permit 3 verification dated 3 July 2019 due to damage sustained during Hurricane Harvey. The pier would be reconstructed utilizing a slightly larger footprint than what was detailed in Permit 6701, and an updated design that would better withstand future storm surge events. The proposed pier would be constructed with the following: 20 concrete pilings (14-inch by 14-inch by 60-foot), 22 concrete pilings (14-inch by 14-inch by 40-foot), 21 concrete pile caps, 185 Type A panels (5-foot by 4-foot dimensions), 56 Type B1 beams (626 linear feet), 28 Type B2 beams (313 linear feet), 626 feet of guard/hand railing; and Various lighting and electrical fixtures.

Pier reconstruction activities would initially begin by installing the 42 concrete pilings via a crane-barge with an approximate 40-foot lead. Piles measuring 60 feet in length would be driven to a depth of approximately 55 feet below an assumed water line elevation of +65 feet mean high tide (MHT) while piles measuring 40 feet in length would be driven to a depth of approximately 35 feet below the same assumed water line elevation. Once complete, pile caps would be installed followed by type B1 and B2 beams to frame out the approach and pier. Type A panels along with the guard/hand railing and various electrical fixtures would then be installed to complete construction of the project.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00348. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 20-1335-F1

Applicant: City of Port Aransas

Location: The project site is located at the site of the former Roberts Point Pier location in the Corpus Christi Ship Channel at Roberts Point Park in Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.841435, -97.064432

Project Description: The applicant proposes to construct a pier consisting of a 100-foot-long by 5-foot-wide approach with a 140- by 11-foot platform (L-head) to replace a pier originally permitted for this location on 18 February 1981 (Permit 15193), and removed in its entirety under a Nationwide Permit 3 verification dated 3 July 2019 due to damage sustained during Hurricane Harvey. The pier would be for public use. The pier would be reconstructed utilizing a slightly smaller footprint than what was detailed in Permit 15193 and an updated design that would better withstand future storm surge events. The proposed pier would be constructed with the following: 29 concrete pilings (14-inch by 14-inch by 40-foot), 15 concrete pile caps, 100 Type A panels (5-foot by 4-foot dimensions)

26 Type B1 beams (498 linear feet), 13 Type B2 beams (249 linear feet), 498 feet of guard/handrailing; and Various lighting and electrical fixtures.

Pier reconstruction activities would initially begin by installing the 29 concrete pilings via a crane-barge with an approximate 40-foot lead. Piles would be driven to a depth of approximately 35 feet below an assumed water line elevation of +65 feet mean high tide (MHT). Once complete, pile caps would be installed followed by type B1 and B2 beams to frame out the approach and pier. Type A panels along with the guard/hand railing and various electrical fixtures would then be installed to complete construction of the project.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00349. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 20-1336-F1

Applicant: City of Port Aransas

Location: The project site is located at the former Charlie's Pasture Pier location in the Corpus Christi Ship Channel along Port Street at Charlie's Pasture Park in Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.838919, - 97.076363

Project Description: The applicant proposes to construct a 260-foot-long by 8-foot-wide pier with a 92- by 8-foot T-head to replace a pier originally permitted for this location on 8 October 1953 (Permit 2510), and removed in its entirety under a Nationwide Permit 3 verification dated 3 July 2019 due to damage sustained during Hurricane Harvey. The pier would be for public use. The pier would be reconstructed utilizing a slightly longer footprint than what was detailed in Permit 2510, and an updated design that would better withstand future storm surge events. The proposed pier would be constructed with the following: 22 concrete pilings (14-inch by 14-inch by 60-foot), 28 concrete pil-

ings (14-inch by 14-inch by 40-foot), 25 concrete pile caps, 146 Type A panels (5-foot by 4-foot dimensions), 8 Type B panels (5.5-foot by 4-foot dimensions), 38 Type B1 beams (728 linear feet)

19 Type B2 beams (364 linear feet), 739 feet of guard/hand railing; and Various lighting and electrical fixtures.

Pier reconstruction activities would initially begin by installing the 50 concrete pilings via a crane-barge with an approximate 40-foot lead. Piles measuring 60 feet in length would be driven to a depth of approximately 55 feet below an assumed water line elevation of +65 feet mean high tide (MHT) while piles measuring 40 feet in length would be driven to a depth of approximately 35 feet below the same assumed water line elevation. Once complete, pile caps would be installed followed by type B1 and B2 beams to frame out the approach and pier. Type A and B panels along with the guard/hand railing and various electrical fixtures would then be installed to complete construction of the project.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00350. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 20-1337-F1

Applicant: City of South Padre Island

Location: The project site is located on a 107-acre parcel of land, wind tidal flats, and salt marsh contiguous with the Laguna Madre, approximately 0.32 mile north of Beach Access Road 4 along Ocean Boulevard (Park Road 100), South Padre Island, Cameron County, Texas.

Latitude & Longitude (NAD 83):

Project Description: The applicant proposes to place approximately 13,423 cubic yards of "Geoweb" stabilizing material and crushed stone into 2.332 acres of tidal flats (0.16 acre), estuarine marsh (1.98 acres) and palustrine wetlands (0.192 acre) in order to construct a permeable vehicular path from Park Road 100 to the Laguna Madre in order to improve recreational access for non-motorized wind and water-based activities (wind surfing, kayaking, fishing, etc.). Four permeable parking areas would be constructed, one of which would also include a permeable vehicle unloading zone and two equipment set-up/rigging areas. The four parking areas would provide parking for up to 309 vehicles both within and outside of jurisdictional waters. A "Green Flush" restroom facility would be constructed in an upland area to avoid direct impacts.

The applicant has stated that a draft mitigation plan is under development and would be submitted for review at a later time. This draft mitigation plan would include approximately 80.5 acres of tidal flats to be preserved onsite from further degradation as a result of unrestricted vehicular traffic. In addition, 0.28 acre of salt marsh habitat and 0.23 acre of brackish marsh habitat would be planted on the slopes of the vehicular access path and parking areas, as mitigation for impacts to 0.53 acre of salt marsh habitat and 0.05 acre of brackish marsh habitat.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00232. 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: 20-1338-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-202003173
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: August 5, 2020

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Texas Health and Human Services Commission

Amendment to the Youth Empowerment Services (YES) Waiver

Public Notice

Because of the public health emergency resulting from 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 Youth Empowerment Services (YES) waiver administered under §1915(c) of the Social Security Act through an Appendix K.

HHSC has requested approval to implement the following changes until no later than the end of the public health emergency. Because the situation is evolving, HHSC will determine the most appropriate timeframe for ending each change, which may be before the public health emergency ends. The proposed effective date for this amendment is March 13, 2020.

The request proposes to amend the waiver by making the following changes:

Allow CPR and First Aid certification of existing service providers to extend past the date the certification expires until in-person CPR and First Aid classes are available for the service providers to attend. Allowing this flexibility will help ensure a sufficient number of service providers and continuity of care for the individuals in the YES waiver.

Additionally, the state is working under the authority of the blanket waivers given by CMS. https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf

CMS has determined that public notice requirements normally applicable under 1915(c) do not apply to information contained in an Appendix K. Therefore, states applying for COVID-19 §1915 (c) Appendix K amendments are not required to conduct a public notice and input process.

If you want to obtain a free copy of the proposed request to amend the waiver or if you have questions, or need additional information regarding this amendment you may contact Luis Solorio by email or telephone as follows:

Telephone

(512) 487-3449

Email

TX_Medicaid_Waivers@hhsc.state.tx.us

TRD-202003170
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 5, 2020

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COVID-19 Section 1115 - Texas Healthcare Transformation Quality Improvement Program Waiver

Public Notice

Due to the public health emergency resulting from the impact of COVID-19 on the State of Texas, the state requests, via submission of the COVID-19 Section 1115 (a) Demonstration Application Template, waiver or modification of certain requirements outlined in the Texas Healthcare Transformation Quality Improvement Program Waiver (THTQIP-11-W-00278-6) and the Texas Medicaid State Plan. HHSC requests approval from the Centers for Medicare & Medicaid Services (CMS) to implement the following flexibilities related to the inpatient hospital spell of illness limitation.

For inpatient hospital stays related to COVID-19, the state requests to extend the 30-day spell of illness limitation in STAR+PLUS for an additional 30 days, allowing an individual to stay up to 60 days in a hospital.

For inpatient hospital stays related to COVID-19, the state also requests to extend the 30-day spell of illness limitation described in the State Plan for an additional 30 days to allow an individual to stay up to 60 days in a hospital. Additionally, for COVID-19 related stays, the state requests to allow an individual to exceed the $200,000 inpatient hospital benefit limitation outlined in the State Plan.

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 Luis Solario at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-202003152
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 4, 2020

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Versant Casualty Insurance Company, a foreign fire and/or casualty company. The home office is in Baton Rouge, Louisiana.

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-202003172
James Person
General Counsel
Texas Department of Insurance
Filed: August 5, 2020

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Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation (TDLR) adopted amendments to 16 TAC §121.75 in the July 24, 2020, issue of the *Texas Register* (45 TexReg 5192). The amendments were noted as being adopted without changes from the proposed rulemaking that was published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1161). Due to an error by TDLR, the existing text of subsection (a) paragraphs (1) and (2) was omitted from both the proposed rulemaking as well as the adopted rulemaking.

The complete text of subsection (a) should include paragraphs (1) and (2) and should read as follows:

(a) Individuals certified by the BACB are required to comply with the BACB Professional and Ethical Compliance Code for Behavior Analysts.

(1) The department may consult the requirements of the certifying entity or the BACB Professional and Ethical Compliance Code for Behavior Analysts in the application and enforcement of the ethical standards included in this section.

(2) The department will apply the requirements of this section consistent with the requirements, guidance, and interpretations of the certifying entity unless an alternate interpretation is reasonably necessary or required.

TRD-202003129

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Texas Lottery Commission

Scratch Ticket Game Number 2234 "$50,000 BONUS CASHWORD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2234 is "$50,000 BONUS CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2234 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2234.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2234 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2234), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2234-0000001-001.

H. Pack - A Pack of the "$50,000 BONUS CASHWORD" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of Ticket 001 and the back of Ticket 125. Configuration B will show the back of Ticket 001 and the front of Ticket 125.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$50,000 BONUS CASHWORD" Scratch Ticket Game No. 2234.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "$50,000 BONUS CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one hundred one (101) Play Symbols. A prize winner in the $50,000 BONUS CASHWORD Scratch Ticket Game is determined once the latex on the Scratch Ticket is completely scratched off to expose all of the YOUR 20 LETTERS and the two BONUS LETTERS. The player then scratches all the letters found in the $50,0000 BONUS CASHWORD puzzle that exactly match the YOUR 20 LETTERS and BONUS LETTERS. If the player has scratched at least 3 complete WORDS, the player wins the prize found in the PRIZE LEGEND. Only one prize paid per Ticket. Only letters within the $50,000 BONUS CASHWORD puzzle that are matched with the YOUR 20 LETTERS and BONUS LETTERS can be used to form a complete WORD. Every letter within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the player's YOUR 20 LETTERS and BONUS LETTERS to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three letters. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly one hundred one (101) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption; Crossword and Bingo style games do not typically have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly one hundred one (101) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the one hundred one (101) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one hundred one (101) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: The grid on each Ticket will contain exactly the same number of letters.

D. CROSSWORD GAMES: The grid on each Ticket will contain exactly the same number of words.

E. CROSSWORD GAMES: No matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.2.0, dated January 31, 2019.

G. CROSSWORD GAMES: All words will contain a minimum of three (3) letters.

H. CROSSWORD GAMES: All words will contain a maximum of nine (9) letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS and the BONUS LETTERS play areas. Vowels are considered to be A,E,I,O,U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in the grid.

K. CROSSWORD GAMES: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS and BONUS LETTERS play areas will open at least one (1) letter in the grid.

M. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS and the BONUS LETTERS play areas will not be indicative of a winning or Non-Winning Ticket.

N. CROSSWORD GAMES: Words from the TEXAS REJECTED WORD LIST v.2.3, dated December 4, 2017, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

O. CROSSWORD GAMES: On Non-Winning Tickets, there will be two (2) completed words in the grid.

P. CROSSWORD GAMES: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action or prize structure.

Q. CROSSWORD GAMES: There will be no more than twelve (12) complete words in the grid.

R. CROSSWORD GAMES: A Ticket can only win one (1) time.

S. CROSSWORD GAMES: The two (2) BONUS LETTERS Play Symbols will not match any of the YOUR 20 LETTERS Play Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 BONUS CASHWORD" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 BONUS CASHWORD" Scratch Ticket Game prize of $5,000 or $50,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 BONUS CASHWORD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$50,000 BONUS CASHWORD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$50,000 BONUS CASHWORD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 35,760,000 Scratch Tickets in Scratch Ticket Game No. 2234. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2234 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3.00	3,933,600	9.09
$5.00	2,002,560	17.86
$10.00	1,716,480	20.83
$15.00	500,640	71.43
$20.00	429,120	83.33
$50.00	143,040	250.00
$100	58,110	615.38
$500	2,980	12,000.00
$5,000	89	401,797.75
$50,000	18	1,986,666.67

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.07. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2234 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2234, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003153

Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 4, 2020

♦ ♦ ♦

Scratch Ticket Game Number 2263 "MONEY MULTIPLIER"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2263 is "MONEY MULTIPLIER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2263 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2263.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, STACK OF CASH SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2263 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON

42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
STACK OF CASH SYMBOL	WIN$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$250	TOFF
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2263), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2263-0000001-001.

H. Pack - A Pack of the "MONEY MULTIPLIER" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MONEY MULTIPLIER" Scratch Ticket Game No. 2263.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY MULTIPLIER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "STACK OF CASH" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least once, except on Tickets winning twenty (20) times, with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. All YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., $20 and 20 and $50 and 50).

I. On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "STACK OF CASH" (WIN$) Play Symbol will never appear on the same Ticket as the "2X" (DBL), "5X" (WINX5) or "10X" (WINX10) Play Symbols.

L. The "2X" (DBL) Play Symbol will never appear more than once on a Ticket.

M. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

N. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

O. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

Q. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

R. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

S. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

U. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

V. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

W. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

X. The "STACK OF CASH" (WIN$) Play Symbol will win the prize for that Play Symbol.

Y. The "STACK OF CASH" (WIN$) Play Symbol will never appear more than once on a Ticket.

Z. The "STACK OF CASH" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

AA. The "STACK OF CASH" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MULTIPLIER" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MULTIPLIER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2263. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2263 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	896,000	8.04
$10.00	576,000	12.50
$20.00	160,000	45.00
$25.00	70,000	102.86
$50.00	110,000	65.45
$100	19,300	373.06
$250	2,440	2,950.82
$500	1,400	5,142.86
$1,000	55	130,909.09
$100,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.92. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2263 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2263, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202003145
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 4, 2020

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Public Utility Commission of Texas

Public Notice of Second Request for Comments Review of Issues Relating to Electric Vehicles

The staff of the Public Utility Commission of Texas (commission) requests comments on questions regarding Project No. 49125, *Review of Issues Relating to Electric Vehicles.* Written comments may be filed through the Interchange on the commission's website as long as the commission's Order filed in Docket No. 50664, *Issues Related to the State of Disaster for Coronavirus Disease 2019,* is in effect. A copy of all comments received may be viewed by accessing the Interchange at: https://interchange.puc.texas.gov. Should the commission's Order entered in Docket No. 50664 no longer be in effect, then parties may file written comments by submitting 16 copies of such comments to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin Texas 78711-3326. All comments should reference Project No. 49125. Comments are due by August 28, 2020. No replies are requested at this time.

Questions concerning this notice should be referred to Kristin Abbott at (512) 936-7459 or kristin.abbott@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

1. As a matter of policy, which entity or entities should be permitted to own or operate an electric vehicle charging station in the Texas competitive electric market? Is a different ownership structure appropriate for service areas not open to retail competition?

2. Is the operation of an electric vehicle charging station a retail sale of electricity?

3. As a matter of policy, how should the cost of the distribution system infrastructure associated with an electric vehicle charging station be recovered in the Texas competitive electric market?

4. Is the answer to Question 3 different for an electric vehicle charging station located in a remote area, primarily for use by long-distance rather than local motorists?

TRD-202003133
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2020

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Texas State Soil and Water Conservation Board

Request for Proposals for the Fiscal Year 2021 Clean Water Act §319(h) Nonpoint Source Grant Program

PROPOSALS DUE: September 25, 2020

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the *Texas NPS Management Program.* The *Texas NPS Management Program* is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: (1) implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans); (2) surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs); (3) technical assistance to landowners for conservation planning; (4) public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups; and (5) monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

Proposals Requested

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration, and education projects within the boundaries of impaired or threatened watersheds. The Texas Integrated Report of Surface Water Quality (https://www.tceq.texas.gov/waterquality/assessment) describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality consistent with the goals, objectives, and priority watersheds and aquifers identified in Appendix C and D of the *Texas NPS Management Program.* Up to $1 million of the TSSWCB's FY2021 CWA §319(h) grant will be eligible for award under this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for available funding.

Applicants that submit project proposals should, where applicable, focus on interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and highlight public participation. Examples of project proposals previously funded by TSSWCB are available at:

https://www.tsswcb.texas.gov/index.php/programs/texas-nonpoint-source-management-program/active-nonpoint-source-grant-projects.

Additionally, applicants are encouraged to review EPA's Grant Guidelines for the NPS Program available at https://www.epa.gov/nps/319-grant-program-states-and-territories.

Individual Award Amounts

This RFP does not set a maximum or minimum award amount for individual projects; however, project funding generally ranges between $100,000 and $400,000 for a two to three-year project.

Reimbursement and Matching Requirements

The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement, however proposals that do not meet the minimum matching requirement will still be considered. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The match must be from non-federal sources (may be cash or in-kind services) and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Required Reporting and QAPP

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental data collection, generation or compilation component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and the EPA. Project budgets and timelines should account for the development and review of QAPPs, final reports, and watershed protection plans. More information on QAPPs and the *TSSWCB Environmental Data Quality Management Plan* is available at https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/environmental-data-quality-management.

TSSWCB PRIORITIES

For this FY2021 RFP, the following project priorities have been identified. Proposals that do not focus on these priorities are still welcomed but may score lower than those that focus on the priorities.

Priority Project Activities

Implement WPPs and TMDL I-Plans (see priority areas listed below).

WPP development initiatives (see Appendix C in *Texas NPS Management Program*), which include activities such as the formation of watershed groups or water quality data collection and analysis.

Implement components of the *Texas Coastal NPS Pollution Control Program* in the Coastal Management Zone (https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program/coastal-nonpoint-source-pollution-control-program).

Support use of federal Farm Bill Programs and Initiatives (National Water Quality Initiative (NWQI)).

Demonstration projects and/or development/delivery of education programs.

Priority Areas for WPP Implementation Projects

WPPs

Leon River

Geronimo and Alligator Creeks

Lake Lavon

Plum Creek (Segment 1810)

Lampasas River

Double Bayou

Navasota River

Attoyac Bayou

Mid and Lower Cibolo

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations (for profit), may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS AND AWARD

Review Process

TSSWCB will review each proposal that is submitted by the deadline by an eligible organization.

At any time during the review process, a TSSWCB staff member may contact the applicant for additional information.

All areas of the budget are subject to review and approval by TSSWCB.

Scoring

Reviewed proposals will be scored and ranked based on the evaluation and ranking criteria included in this RFP on pp. 19-20. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. All grant awards will be contingent on the selected applicant's return of a grant contract provided by TSSWCB which will incorporate all applicable state and federal contracting requirements.

Grant Award Decisions

During the grant review and award process, the TSSWCB may take into consideration other factors including whether the applicant has demonstrated acceptable past performance as a grantee in areas related to programmatic and financial stewardship of grant funds.

TSSWCB may choose to award a grant contract from a different TSSWCB funding source than that for which the applicant applied.

TSSWCB is not obligated to award a grant at the total amount requested and/or within the budget categories requested. TSWCB reserves the right to make awards at amounts above and/or below the stated funding levels. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the TSSWCB. The decisions made by the TSSWCB are final and are not subject to appeal.

Funding Priority

TSSWCB reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions.

Grant Award Notification

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds. TSSWCB may utilize a grant contract document and/or a notice of grant document once a decision is made to award a grant. The applicant will be given a deadline to accept the grant award and to return the appropriate document to the TSSWCB within the time prescribed by the TSSWCB. An applicant's failure to return the signed document to the TSSWCB within the prescribed time period will be construed as a rejection of the grant award, and the TSSWCB may de-obligate funds.

Special Conditions

The TSSWCB may assign special conditions at the time of the award. Until satisfied, these special conditions may affect the applicant's ability to receive funds. If special conditions are not resolved, the TSSWCB may de-obligate funds up to the entire amount of the grant award.

ELIGIBLE BUDGET CATEGORIES

Personnel

Fringe Benefits

Travel

Equipment

Supplies

Contractual

Construction

Other

Indirect

INELIGIBLE COSTS

Ineligible costs include, but are not limited to:

Contracting for grant activities that would otherwise be provided by employees of the grantee's organization

Payment for lobbying

Purchasing food and beverages except as allowed under Texas State Travel Guidelines

Purchasing or leasing vehicles

Purchasing promotional items or recreational activities

Paying for travel that is unrelated to the direct delivery of services that supports the project funded under this RFP

Paying consultants or vendors who participate directly in writing a grant application

Paying any portion of the salary or any other compensation for an elected government official

Payment of bad debt, fines or penalties

Purchasing any other products or services the TSSWCB identifies as inappropriate or unallowable.

Any unallowable costs set forth in state or federal cost principles

Any unallowable costs set forth in the NPS Grant Program.

STATE AND FEDERAL REQUIREMENTS

All applicants should review and be familiar with the TSSWCB administrative rules governing Nonpoint Source Grant Program. These rules are published in Texas Administrative Code, Title 31, Chapter 523.1(b)(2):

https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=31&pt=17&ch=523&rl=1

In addition to the TSSWCB's administrative rules, applicants should be familiar with the Uniform Grant Management Standards (UGMS) and relevant Code of Federal Regulations (CFR) that relate to state, and if applicable, federal grant funding. UGMS can be found at: https://comptroller.texas.gov/purchasing/grant-management/. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 can be found at: http://www.ecfr.gov.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit https://www.tsswcb.texas.gov/programs/texas-nonpoint-source-management-program or contact Jana Lloyd at (254) 231-2491. All proposals must be submitted electronically (MS® Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to jlloyd@tsswcb.texas.gov. Proposals must be received electronically by 5:00 p.m. CDT, September 25, 2020, to be considered.

FY2021 GRANT TIMELINE

Issuance of RFP August 14, 2020

Deadline for Submission of Proposals September 25, 2020

Proposal Evaluation by TSSWCB October-November 2020

Notification of Selected Proposals/Unsuccessful applicants December 2020

Work with applicants to Finalize Selected Proposals November- December 2020

Review of Selected Proposals by EPA January 2021

Submit Grant Application to EPA May 2021

Contract Award August 2021

Anticipated Project Start Date September 1, 2021

TRD-202003142

Liza Parker
Legislative Liaison / Policy Analyst
Texas State Soil and Water Conservation Board
Filed: August 4, 2020

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Texas Workforce Commission

Notice of Correction of Error

The Texas Workforce Commission proposed revisions to 40 TAC Chapter 815, Unemployment Insurance, in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5325). Due to a submittal error, the proposed language approved by the Commission for new §815.181 was not published.

The corrected Explanation of Individual Provisions and proposed rule language for new §815.181 are included in this notice.

On page 5328, the Explanation of Individual Provisions for new §815.181 is corrected to read as follows:

§815.181. Coordination of CARES Act Programs.

New §815.181 describes how CARES Act programs will be integrated into existing benefit programs.

New subsection (a) provides for the program order in which a claimant can claim benefits. That order is as follows:

For a claimant who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

--The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

--if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

--if the claimant exhausts PEUC and the state has "triggered on" to EB under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

--if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

--if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, and EB if "triggered on", but prior to PUA.

New subsection (b) describes that for a claimant who is not eligible for regular compensation, PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to collect PUA.

New subsection (c) addresses the additional compensation provided by FPUC. FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with the respective underlying program for which the claimant is eligible. This applies for the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020 unless subsequently amended by federal law.

On page 5334, the proposed new language for §815.181 is corrected to read as follows:

§815.181. Coordination of CARES Act Programs.

(a) For a claimant who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

(1) The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

(2) if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

(3) if the claimant exhausts PEUC and the state has "triggered on" to Extended Benefits (EB) under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

(4) if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

(5) if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, and EB if "triggered on", but prior to PUA.

(b) For a claimant who is not eligible for regular compensation, PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to collect PUA.

(c) FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with payments under these programs. This applies for the benefit week ending April 4, 2020 through the benefit week ending July 25, 2020 unless subsequently amended by federal law.

TRD-202003174

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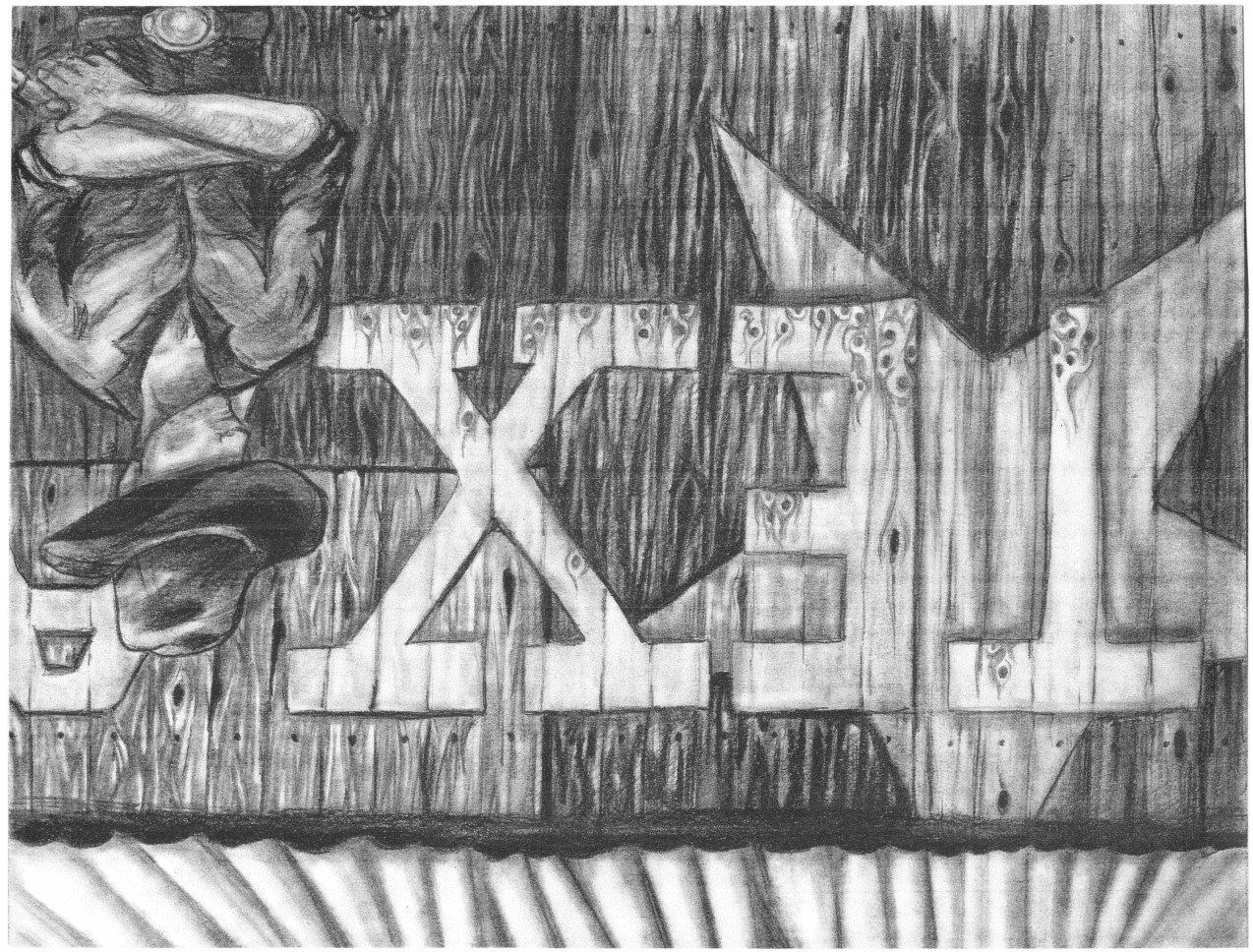

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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