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 March 31, 2022

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2023, Aaron W. Bangor, Ph.D. of Austin, Texas (replacing Jana C. McKelvey of Austin, who resigned).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Sheryl L. Kubala of Austin, Texas (replacing Alicia Giordano of Humble, whose term expired).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2025, Diana Nelson of Martindale, Texas (replacing Elizabeth A. "Beth" Donaldson of Stowell, whose term expired).

Appointments for April 1, 2022

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2027, William L. "Bill" Coorsh of Houston, Texas (replacing Randell K. Resneder of Lubbock, who is deceased).

Appointments for April 4, 2022

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2023, Norma A. Yado of McAllen, Texas (replacing Mark G. Savasta of Houston, who resigned).

Appointments for April 5, 2022

Appointed to the Credit Union Commission for a term to expire February 15, 2027, John D. "David" Bleazard of Katy, Texas (replacing Wesley "Steve" Gilman of Katy, whose term expired).

Appointed to the Credit Union Commission for a term to expire February 15, 2027, Julia R. "Beckie" Stockstill Cobb of Deer Park, Texas (Ms. Cobb is being reappointed).

Appointed to the Credit Union Commission for a term to expire February 15, 2027, Yusuf E. Farran of El Paso, Texas (Mr. Farran is being reappointed).

Appointed as Judge of the 69th Judicial District, Dallam, Hartley, Moore and Sherman Counties, effective April 6, 2022, for a term until December 31, 2022, or until her successor shall be duly elected and qualified, Kimberly L. Allen of Stratford, Texas (replacing Judge Ron Enns of Dumas, who resigned).

Greg Abbott, Governor

TRD-202201272

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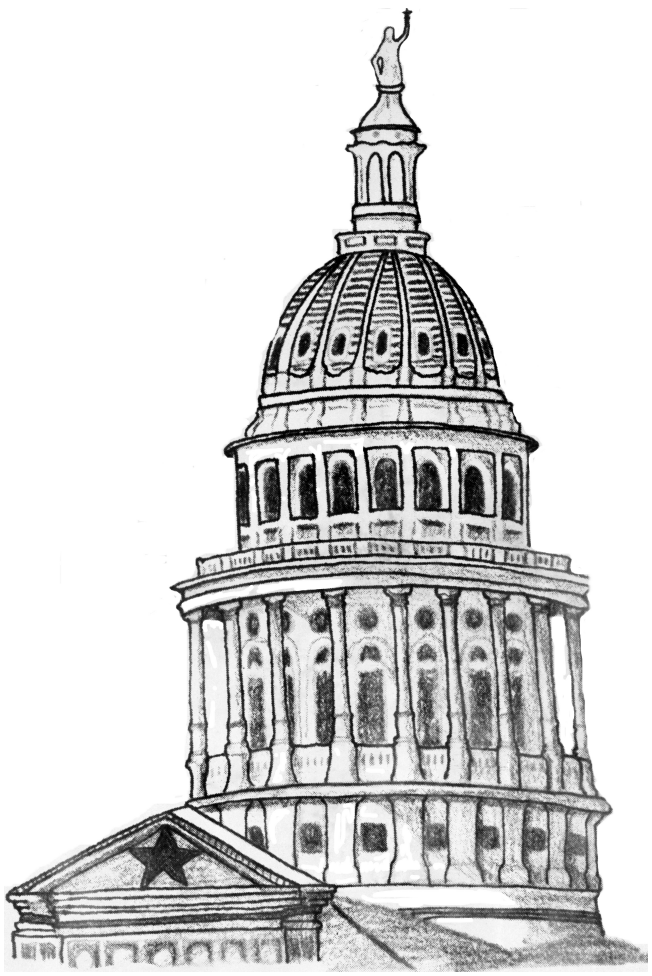

THE ATTORNEY GENERAL

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-0452-KP

Requestor:

The Honorable Martin Placke

Lee County Attorney

200 South Main, Room 305

Giddings, Texas 78942

Re: Whether a magistrate has authority to modify a bond set by a magistrate in a different county where the accused was arrested. (RQ-0452-KP)

Briefs requested by May 2, 2022

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

TRD-202201223
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 5, 2022

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Opinions

Opinion No. KP-0402

The Honorable Mark A. Gonzalez

Nueces County District Attorney

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Whether Code of Criminal Procedure article 55.01(a)(1)(C), which provides for the expunction of all records and files relating to the arrest of a person convicted of unlawfully carrying certain weapons, includes expunction of the conviction itself.

(RQ-0428-KP)

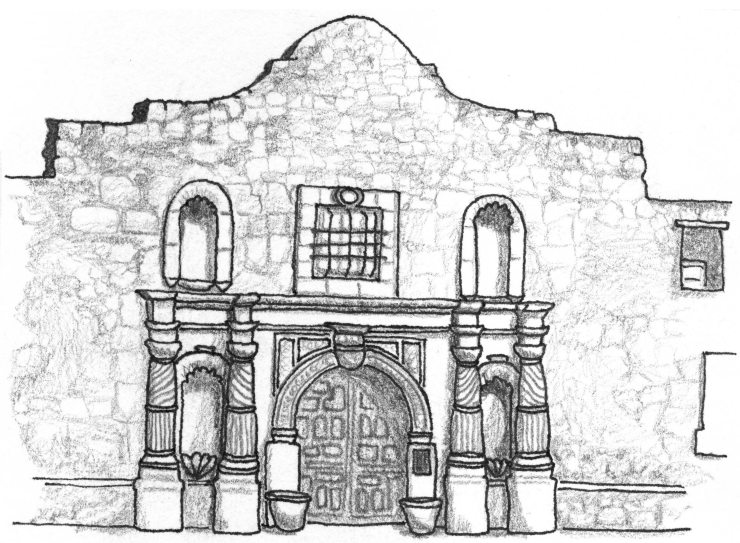
S U M M A R Y

The Firearm Carry Act passed by the Eighty-seventh Legislature decriminalized specified offenses and amended article 55.01 of the Code of Criminal Procedure concerning expunction of certain records. Article 55.01(a)(1)(C) provides for the expunction of all records and files relating to the arrest of a person convicted of an offense committed before September 1, 2021, under section 46.02(a) of the Penal Code as it existed before that date. A court could conclude that an order of expunction under article 55.01(a)(1)(C) may include the judgment of conviction for such an offense.

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

TRD-202201225
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 5, 2022

♦ ♦ ♦



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 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 551. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §551.46

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26, Part 1, Texas Administrative Code, Chapter 551, Subchapter C, new §551.46, concerning an emergency rule to mitigate and contain COVID-19 in an intermediate care facility for individuals with an intellectual disability (ICF/IID) or related condition. As authorized by Texas Government Code §2001.034, HHSC may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas 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 this emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule for ICF/IID Provider Response to COVID-19 - Mitigation.

To protect individuals receiving ICF/IID services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to mitigate and contain COVID-19. The purpose of the new rule is to describe requirements for ICF/IID Provider Response to COVID-19.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§252.031 - 252.033 and §242.043. 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. Texas Health and Safety Code §§252.031 - 252.033 require the Executive Commissioner of HHSC to establish rules prescribing the minimum standards and process for licensure as an intermediate care facility. Texas Health and Safety Code §252.043 establishes HHSC's authority to conduct an inspection, survey, or investigation at an intermediate care facility to determine if the intermediate care facility is in compliance with the minimum acceptable levels of care for individuals who are living in an intermediate care facility, and the minimum acceptable life safety code and physical environment requirements.

The new rule implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§551.46. ICF/IID Provider Response to COVID-19--Mitigation.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Cohort--A group of individuals placed in rooms, halls, or sections of an intermediate care facility with others who have the same COVID-19 status or the act of grouping individuals with other individuals who have the same COVID-19 status.

(2) COVID-19 negative--A person who has tested negative for COVID-19, is not exhibiting symptoms of COVID-19, and has had no known exposure to the virus since the negative test.

(3) COVID-19 positive--A person who has tested positive for COVID-19 and does not yet meet the Texas Department of State Health Services (DSHS) guidance for the discontinuation of transmission-based precautions.

(4) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(5) Fully vaccinated person--A person who received the second dose in a two- dose series or a single dose of a one dose COVID-19 vaccine and 14 days have passed since this dose was received.

(6) Individual--A person enrolled in the ICF/IID Program.

(7) Isolation--The separation of people who have a COVID-19 positive status from those who have a COVID-19 negative status and those whose COVID-19 status is unknown.

(8) Quarantine--The practice of keeping someone who might have been exposed to COVID-19 away from others. Quarantine helps prevent spread of disease that can occur before a person knows

they are sick or if they are infected with the virus without experiencing symptoms.

(9) Unknown COVID-19 status--A person, except as provided by DSHS for an individual who is fully vaccinated for COVID-19 or recovered from COVID-19, who:

(A) is a new admission or readmission;

(B) has spent one or more nights away from the facility;

(C) has had known exposure or close contact with a person who is COVID-19 positive; or

(D) is exhibiting symptoms of COVID-19 while awaiting test results.

(b) An intermediate care facility must have a protocol in place, included in its COVID-19 response plan, that describes how, if the facility cannot successfully isolate the individual, the facility will transfer a COVID-19 positive individual to a facility capable of isolating and caring for the COVID-19 positive individual.

(1) An intermediate care facility must have contracts or agreements with alternative appropriate facilities to ensure care for COVID-19 positive individuals.

(2) An intermediate care facility must assist the individual and family members as needed to transfer the individual to the alternate facility.

(c) An intermediate care facility must have a COVID-19 response plan that includes:

(1) designated space for:

(A) COVID-19 negative individuals;

(B) individuals with unknown COVID-19 status; and

(C) COVID-19 positive individuals, when the facility is able to care for an individual at this level or until arrangements can be made to transfer the individual to a higher level of care;

(2) individual transport protocols; and

(3) if the facility houses COVID-19 positive individuals, an individual recovery plan for continuing care after an individual is recovering from COVID-19.

(d) An intermediate care facility must screen all individuals, staff, and people who come to the facility in accordance with HHSC guidance.

(e) An intermediate care facility must screen each employee or contractor in accordance with HHSC guidance before entering the facility at the start of their shift. Staff screenings must be documented in a log kept at the facility entrance, and must include the name of each person screened, the date and time of the evaluation, and the results of the evaluation. Staff who meet any of the criteria must not be permitted to enter the facility.

(f) An intermediate care facility must assign each individual to the appropriate cohort based on the individual's COVID-19 status.

(g) An individual with unknown COVID-19 status must be quarantined and monitored for fever and other symptoms of COVID-19 in accordance with DSHS guidance.

(h) An individual with COVID-19 positive status must be isolated until the individual meets DSHS recommendations for the discontinuation of transmission-based precautions, if cared for in the facility.

(i) If an individual with COVID-19 positive status must be transferred for a higher level of care, the facility must isolate the individual until the individual can be transferred.

(j) An intermediate care facility must implement a staffing policy requiring the following:

(1) staff must inform the facility per facility policy prior to reporting for work if they have known exposure or symptoms;

(2) staff must perform self-monitoring on the days they do not work; and

(3) the facility must develop and implement a policy regarding staff working with other long-term care (LTC) providers that limits the sharing of staff with other LTC providers and facilities, unless required in order to maintain adequate staffing at a facility.

(k) The facility must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures for the facility's infection prevention and control program must include standard and transmission-based precautions to prevent the spread of COVID-19.

(l) A facility must notify the Texas Health and Human Services Commission (HHSC) Complaint and Incident Intake of COVID-19 activity as described below.

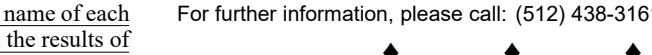
(1) A facility must notify HHSC of the first confirmed case of COVID-19 in staff or individuals, and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more, at HHSC Complaint and Incident Intake (CII) through TULIP, or by calling 1-800-458-9858, within 24 hours of the positive confirmation.

(2) A facility must submit a Form 3613-A Provider Investigation Report, minus the name of the person who tested positive for COVID-19, to HHSC Complaint and Incident Intake, through TULIP, by email at ciiprovider@hhs.texas.gov, or by fax at 877-438-5827, within five working days from the day a confirmed case is reported to CII.

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

Filed with the Office of the Secretary of State on April 5, 2022.

TRD-202201217
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 6, 2022
Expiration date: August 3, 2022
For further information, please call: (512) 438-3161



CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

SUBCHAPTER K. COVID-19 RESPONSE

26 TAC §553.2001

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 553, Licensing Standards for Assisted Living Facilities, new §553.2001, concerning an emergency rule in response to COVID-19 and requiring assisted living facility actions to mitigate

and contain COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

To protect assisted living facility residents and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require assisted living facility actions to mitigate and contain COVID-19. The purpose of the new rule is to describe these requirements.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055, and Texas Health and Safety Code §247.025 and §247.026. 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. Texas Health and Safety Code §247.026 requires the Executive Commissioner of HHSC to adopt rules prescribing minimum standards to protect the health and safety of assisted living residents. Texas Health and Safety Code §247.025 requires the Executive Commissioner of HHSC to adopt rules necessary to implement Texas Health and Safety Code Chapter 247 concerning assisted living facilities.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 247.

§553.2001. Assisted Living Facility COVID-19 Response.

(a) The following words and terms, when used in this section, have the following meanings.

(1) Cohort--A group of residents placed in rooms, halls, or sections of an assisted living facility with others who have the same COVID-19 status or the act of grouping residents with other residents who have the same COVID-19 status.

(2) COVID-19 positive--The status of a person who has tested positive for COVID-19 and does not yet meet Department of State Health Services (DSHS) guidance for the discontinuation of transmission-based precautions.

(3) COVID-19 status--The status of a person based on COVID-19 test results, symptoms, or other factors that consider the person's potential for having the virus.

(b) An assisted living facility must have a COVID-19 response plan that includes a policy that describes how, if the facility cannot successfully isolate a resident, the facility will transfer a COVID-19 positive resident to another facility capable of isolating and caring for the COVID-19 positive resident.

(c) In the situation described in subsection (b) of this section, the assisted living facility must assist the resident and family members to transfer the resident to the alternate facility.

(d) An assisted living facility must screen all residents, staff, and people who come to the facility, in accordance with Texas Health and Human Services Commission (HHSC) guidance.

(e) An assisted living facility must assign each resident to the appropriate cohort based on the resident's COVID-19 status.

(f) A resident with COVID-19 positive status must be isolated until the resident meets guidelines for the discontinuation of transmission-based precautions, if cared for in the facility.

(g) An assisted living facility must develop and enforce policies and procedures for infection control. The written standards, policies, and procedures for the facility's infection prevention and control program must include standard and transmission-based precautions.

(h) An assisted living facility must report COVID-19 activity as required by §553.261(f) of this chapter (relating to Coordination of Care). COVID-19 activity must be reported to HHSC Complaint and Incident Intake as described below.

(1) A facility must notify HHSC of the first confirmed case of COVID-19 in staff or residents and the first confirmed case of COVID-19 after a facility has been without cases for 14 days or more using the HHSC Complaint and Incident Intake through Texas Unified Licensure Information Portal (TULIP) or by calling 1-800-458-9858 within 24 hours of the positive confirmation.

(2) A facility must submit Form 3613-A, Provider Investigation Report, to HHSC Complaint and Incident Intake through TULIP or by calling 1-800-458-9858 within five working days from the day a confirmed case is reported.

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 March 31, 2022.

TRD-202201116
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 3, 2022
Expiration date: July 31, 2022
For further information, please call: (512) 438-3161

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TEXAS
Lone Star State

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

The Office of the Attorney General (OAG) proposes the repeal of the following rules: Chapter 61, Subchapter I (Reimbursement to Law Enforcement Agencies for Forensic Sexual Assault Medical Examinations), §§61.801 - 61.804, and Subchapter K (Address Confidentiality Program), §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1025, 61.1030, 61.1035, 61.1040, 61.1045, 61.1050, 61.1060, 61.1065, 61.1080, 61.1085, 61.1090. In addition, the following rules will be amended to implement statutory changes and as part of the reorganization of the crime victim services rules -- §§61.3, 61.101, 61.202, 61.302, 61.401, and 61.406.

The OAG proposes to replace Chapter 61, Subchapter K with a new Chapter 64 concerning the administration of the Address Confidentiality Program. New Chapter 64 is in the process of being proposed and adopted.

EXPLANATION AND JUSTIFICATION OF RULES

First, Chapter 61 is being amended as part of a substantive reorganization of Chapter 61 to conform with the recodification and citation updates to the Texas Code of Criminal Procedure in House Bill 4173, 86th Regular Session (2019). Specifically, the administrative rules currently governing the Address Confidentiality Program (ACP) and sexual assault forensic medical exam compensation are published within the same chapter of administrative rules as the Crime Victims' Compensation (CVC) Program (1 TAC Chapter 61). Under the revised chapters of the Code of Criminal Procedure, however, the CVC Program, the ACP, and sexual assault forensic medical exam compensation are now published in different statutory chapters (Chapters 56A, 56B, and 58). Therefore, new administrative rule chapters are appropriate and more accurately implement the rulemaking and statutory authorities for these agency functions. OAG proposes a repeal of Chapter 61, Subchapter K to replace those provisions with a new Chapter 64 that will address the administration of the Address Confidentiality Program.

Second, these amendments are proposed to effectuate the substantive amendments to Texas Code of Criminal Procedure enacted in House Bill 616, 86th Regular Session (2019). Specifically, current Subchapter I governs the administration of reimbursements to investigating law enforcement agencies for the costs of forensic medical examinations of sexual assault survivors. However, House Bill 616 replaced the party to be reimbursed for the costs of such exams from law enforcement agencies to health care providers. Therefore, new rules and procedures are required to implement this legislative change and to replace the existing rules, as applications from law enforcement agencies are no longer accepted and health care providers must now submit bills via an online application and web portal. The total amount of eligible compensation per exam remains $1000 but is now payable directly to hospitals and examiners.

Third, House Bill 1446, 85th Regular Session (2015), authorized the OAG to reimburse victims of sexual assault for certain medical costs associated with receiving a forensic examination. Additionally, House Bill 2706, 87th Regular Session (2021) substantively amended the Code of Criminal Procedure Chapter 56A, Subchapters F and G. Therefore, the removal of §§61.3(c), 61.101(a)(4), (a)(5), (a)(7), and (a)(22), 61.202(4), 61.302(e) and (f), 61.401(b), and 61.406(j) are necessary to replace these rules, at a later date, with new rules governing compensation and reimbursements for medical care received during sexual assault forensic medical exams.

These amendments are proposed pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

SECTION-BY-SECTION SUMMARY

Amended §61.3 describes when the OAG may close an application for compensation. Subsection (c) is being removed as part of a reorganization of the crime victim services rules to implement changes made in the Code of Criminal Procedure during the 87th Regular Session (2021).

Amended §61.101 defines key terms in chapter 61. Subsections (a)(4), (a)(5), (a)(7), and (a)(22) are being removed because the definitions will be replaced in a future rule project to implement statutory changes made as a result of House Bill 1446, 85th Regular Session (2015) and House Bill 2706, 87th Regular Session (2021).

Amended §61.202 discusses the timeliness of an application filed. Subsection (4) is being removed because it will be replaced in a future rule project to implement statutory changes made as a result of House Bill 1446, 85th Regular Session (2015) and House Bill 2706, 87th Regular Session (2021).

Amended §61.302 addresses denying an application or award. Subsection (e) is being removed because it will be replaced in a future rule project to implement statutory changes made as a result of House Bill 1446, 85th Regular Session (2015) and House Bill 2706, 87th Regular Session (2021).

Amended §61.401 addresses the eligibility, standards, and reasonable limits on compensation for pecuniary losses. Subsec-

tion (b) is being removed because it will be replaced in a future rule project to implement statutory changes made as a result of House Bill 1446, 85th Regular Session (2015) and House Bill 2706, 87th Regular Session (2021).

Amended §61.406 describes the impact of collateral sources on the OAG's payment for pecuniary losses. Subsection (j) is being removed because it will be replaced in a future rule project to implement statutory changes made as a result of House Bill 1446, 85th Regular Session (2015) and House Bill 2706, 87th Regular Session (2021).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Gene McCleskey, Chief, Crime Victim Services Division for the agency, has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable costs or revenues for state or local governments as a result of enforcing or administering this rule as proposed because this rule is not substantively amending Chapter 61 as the repealed or removed provisions will be transferred to new Chapter 64, which is in the process of being proposed and adopted, or the subsections are being removed because they are no longer applicable as a result of House Bill 1446, 85th Regular Session (2015) and House Bill 2706, 87th Regular Session (2021).

PUBLIC BENEFIT AND COST NOTE

Mr. McCleskey has determined that for the first five-year period the proposed rule is in effect, the public cost will be zero because the rule does not add any duties, responsibilities, or expenses which are not already required and appropriated to implement the statute. For the same reasons, he has determined there will be no probable economic cost to persons required to comply with the chapter.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

There is no effect on any local economy for the first five years the proposed rule is in effect because the rule does not add any duties, responsibilities, or expenses which are not already required. Therefore, no economic impact statement or local employment impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. McCleskey has also determined that there will not be an impact on rural communities, small businesses, or micro-businesses resulting from implementation of the proposed rule. The rule does not add any duties, responsibilities, or expenses, and therefore, no regulatory flexibility analysis is required as specified in Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the proposed rule is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not result in an increase or decrease in the number of agency employees;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not lead to an increase or decrease in fees paid to a state agency;

- will not create a new regulation;

- will repeal an existing regulation;

- will not result in an increase or decrease in the number of individuals subject to the rule; and

- will not positively or adversely affect the state's economy because it is reorganizing an existing chapter that is already in effect.

REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rule may be submitted electronically to Kristen D. Huff, Assistant Attorney General, Crime Victim Services Division by email to Kristen.Huff@oag.texas.gov or by mail to Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. The OAG will consider any written comments on the proposal that are received by OAG no later than 5:00 p.m., central time, on May 16, 2022.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to Kristen.Huff@oag.texas.gov or by mail to Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

SUBCHAPTER A. SCOPE AND CONSTRUCTION OF RULES AND GENERAL PROVISIONS

1 TAC §61.3

STATUTORY AUTHORITY. Section 61.3 is being amended by removing subsection (c) pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.3. Closing Applications.

(a) An application for compensation may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) The victim has been awarded the statutory maximum amount of compensation allowed under Texas Code of Criminal Procedure Article 56.42, in accordance with the law in effect at the date of the criminally injurious conduct or the date of the forensic medical examination for emergency medical care applications;

(2) The 30-day time period for appealing the decision of the OAG to award or deny an application or award has passed without a request from the victim or claimant for reconsideration;

(3) The 30-day time period for appealing the reconsideration has passed without a request from the victim or claimant for a hearing;

(4) The 40-day period has passed for filing a written notice of dissatisfaction with the OAG's final decision;

(5) The 40-day period has passed to bring suit in district court after filing a written notice of dissatisfaction with the OAG's final decision;

(6) The victim or claimant knowingly or intentionally submits false or forged information to the OAG;

(7) The victim or claimant submits an incomplete application or a service provider submits an incomplete file on behalf of the victim or claimant;

(8) The victim or claimant fails to respond within a 30-day period to a request made by the OAG for information;

(9) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating that a crime occurred;

(10) The victim or claimant fails to report a collateral source or any other source of income; [~~or~~]

[~~(11) The victim is approved for compensation and subsequently dies without a claimant on the application. Payment may only be made on crime related bills submitted to the OAG prior to the victim's death which meet all payment requirements. Upon the victim's death, the individual who is legally charged with administering the victim's estate may request to become a claimant and the application may remain open or be reopened for payment of crime related expenses;~~]

(11) [~~(12)~~] The victim or claimant fails to provide requested medical reports pursuant to §61.502(a) of this chapter (relating to Medical Reports and Records);

(12) [~~(13)~~] The victim or claimant fails to submit to an independent physical or mental examination requested pursuant to §61.502(d) of this chapter; [~~or~~]

(13) [~~(14)~~] The victim or claimant delays medically recommended treatment or is non-compliant with medical orders; or [~~.~~]

(14) The victim is approved for compensation and subsequently dies without a claimant on the application. Payment may only be made on crime related bills submitted to the OAG prior to the victim's death which meet all payment requirements. Upon the victim's death, the individual who is legally charged with administering the victim's estate may request to become a claimant and the application may remain open or be reopened for payment of crime related expenses.

(b) A closed application may be reopened upon the receipt of requested information, the OAG's own motion, or upon written request showing good cause by the victim or claimant.

[~~(c) Emergency medical care applications are not subject to:~~]

[~~(1) subsection (a)(9) of this section;~~]

[~~(2) subsection (a)(10) of this section, except in cases when the collateral source is a federal or federally financed collateral source such as Medicaid or Medicare.~~]

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

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SUBCHAPTER B. DEFINITIONS

1 TAC §61.101

STATUTORY AUTHORITY. Section 61.101 is being amended by removing (a)(4), (a)(5), (a)(7), and (a)(22) pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.101. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings:

(1) Application--A request for compensation in accordance with Texas Code of Criminal Procedure Article 56.36(a), including an emergency medical care application.

(2) Closed Application--An application which has been administratively closed under §61.3 of this chapter (relating to Closing Applications). The administrative closure of an application will prevent further payments, reimbursements or other claim processing to occur unless the application is reopened under §61.3(b) of this chapter.

(3) Disability Period--The length of time that a victim has a medically determinable physical or mental impairment that causes the victim to be unable to perform their work as a direct result of the criminally injurious conduct. For a victim under 18, the disability period means the length of time the victim has a medically determinable physical or mental impairment, or a combination of impairments, that causes marked and severe functional limitations as a direct result of the criminally injurious conduct. The disability period must be determined by a Medical Doctor (M.D.), Doctor of Osteopathy (D.O.), or the OAG.

[~~(4) Emergency Medical Care Application--An application arising out of a forensic medical examination under Texas Code of Criminal Procedure Article 56.06 or 56.065 which is eligible only for payments of expenses incurred for emergency medical treatment.~~]

[~~(5) Emergency Medical Treatment--Emergency medical care as defined by Texas Health and Safety Code §773.003(7-a) provided to a sexual assault survivor as a result of a request for a forensic medical examination.~~]

(4) [~~(6)~~] Extraordinary Pecuniary Losses--As used in Texas Code of Criminal Procedure Article 56.42(b), means economic losses which exceed the limits on compensation in effect on the date of the criminally injurious conduct giving rise to the application for compensation. Extraordinary pecuniary losses may include loss of earnings, but only in addition to the statutorily enumerated costs, which are further described in §61.407 of this chapter (relating to Additional Compensation for Extraordinary Pecuniary Losses).

[~~(7) Forensic Medical Examination--A specialized examination provided pursuant to Texas Government Code Chapter 420, which uses an OAG-approved evidence collection kit and protocol.~~]

(5) [~~(8)~~] Funeral Purchase Agreement--A written statement of funeral goods and services signed by a claimant and a representative of the service provider which itemizes the cost of funeral services or merchandise selected by a claimant. The agreement may or may not include terms governing burial expenses, but it must include the following information:

(A) the funeral goods and funeral services selected by that person and the prices to be paid for each, unless there is an itemized discounted package arrangement;

(B) specifically itemized cash advance items; and

(C) the total cost of the goods and services selected.

(6) [~~(9)~~] Health Care Service Provider--Any person or entity that provides medical, psychiatric care or counseling services, and includes a doctor or other person duly licensed to practice one or more of the healing arts, a health care facility, or an entity providing health care.

(7) [~~(10)~~] Incarcerated--A person who is confined in a penal institution as a result of being arrested for, charged with, or convicted of a criminal offense. This term also includes persons who have been detained in a confined space pending or during transport to or from a penal institution.

(8) [~~(11)~~] Interested Person--As used in Texas Code of Criminal Procedure Article 56.40(c), includes a victim and any valid claimants whose application for compensation may be affected by the outcome of a final ruling hearing and does not include the accused criminal offender or non-claimant creditors.

(9) [~~(12)~~] Law enforcement agency--As used in Texas Code of Criminal Procedure Chapter 56, means a governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article 2.12.

(10) [~~(13)~~] Medical--As used in Texas Code of Criminal Procedure Article 56.32(a)(9)(A), means medical, hospital, nursing, physical therapy or dental services and includes the costs of medical treatment, or any other medical cost deemed appropriate by the OAG. Except for an admission to a hospital or clinic for in-patient psychiatric treatment, a residential treatment center, or intensive outpatient programs, the term medical does not include psychiatric care or counseling, as that term is defined in this chapter.

(11) [~~(14)~~] Medically Indicated Services--As used in Texas Code of Criminal Procedure Article 56.32(a)(9)(B)(ii), means medical treatment, or psychiatric care or counseling related to the disability period resulting from the personal injury which is ordered and provided by a heath care service provider.

(12) [~~(15)~~] Medically Necessary--As used in Texas Code of Criminal Procedure Article 56.385, refers to services that a health care service provider, exercising prudent clinical judgment, would provide to a victim or claimant for the purpose of evaluating, diagnosing or treating an illness, injury, disease or its symptoms.

(13) [~~(16)~~] Penal Institution--As used in Texas Code of Criminal Procedure Article 56.41(b)(6) and as defined in the Texas Penal Code §1.07, refers to a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(14) [~~(17)~~] Physical Therapy--As used in Texas Code of Criminal Procedure Article 56.32(a)(9)(A), refers to treatment prescribed by a M.D., D.O., or Chiropractic Doctor (D.C.), conducted under the direct supervision of the M.D., D.O., D.C., or a physical therapist, and means health care services that prevent, identify, correct, or alleviate acute or prolonged movement dysfunction or pain of anatomical or physiological origin.

(15) [~~(18)~~] Psychiatric Care or Counseling--As used in Texas Code of Criminal Procedure Articles 56.32(a)(9)(A) and 56.32(a)(2)(D)(I), means psychiatric care or counseling performed by a mental health service provider with a professional license and may include any modality recognized by the Texas Department of Insurance, Division of Workers Compensation in their medical fee guidelines. The types of licenses approved by the OAG to provide psychiatric care or counseling are listed on the OAG website. The term psychiatric care or counseling does not include an admission to a hospital or clinic for in-patient psychiatric treatment, admission to a residential treatment center or intensive outpatient programs, which are considered medical expenses.

(16) [~~(19)~~] Reports--As used in Texas Code of Criminal Procedure Article 56.38(d), includes both written and oral reports from a law enforcement agency as deemed appropriate by the OAG.

(17) [~~(20)~~] Resident--As used in Texas Code of Criminal Procedure Article 56.32(a)(11)(A)(ii), means a person who has a domicile in Texas or who lives for more than a temporary period in Texas, another state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a possession or territory of the United States.

(18) [~~(21)~~] Service Provider--Any provider of compensable services to a victim or claimant including, but not limited to, health care service providers, mental health counselors, funeral or burial service providers, child care providers, landlords, moving companies, or any other person or entity who is eligible to receive direct payments from the OAG on behalf of a victim or claimant under Texas Code of Criminal Procedure Article 56.44(d) for pecuniary losses under Texas Code of Criminal Procedure Article 56.32(a)(9).

~~[(22) Sexual Assault Survivor--As defined by Texas Health and Safety Code §323.001(5), means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.]~~

(19) [~~(23)~~] Total and Permanent Disability--As used in Texas Code of Criminal Procedure Article 56.42(b), means the victim is not likely to recover from their crime related personal injury such that an M.D. or D.O. may certify with reasonable medical certainty that a disabling condition will continue indefinitely and results in the victim's disqualification or inability to perform the usual tasks of a worker in such a way as to leave the victim at a substantial disadvantage in the competitive labor market for any type of work. The term does not require permanent unemployment.

(20) [~~(24)~~] Trafficking of Persons--As defined by Texas Code of Criminal Procedure Article 56.32(a)(14), means any offense that results in a person engaging in forced labor or services and that may be prosecuted under Texas Penal Code §§20A.02, 20A.03, 43.03, 43.04, 43.05, 43.25, 43.251, or 43.26.

(b) The definitions in this chapter will be given their most ordinary meaning unless the context clearly indicates otherwise, in accordance with Texas Government Code §312.002(a).

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

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SUBCHAPTER C. APPLICATION

1 TAC §61.202

STATUTORY AUTHORITY. Section 61.202 is being amended by removing paragraph (4) pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.202. Timely Filing an Application.

Except as provided by paragraph (7) [~~(8)~~] of this section:

(1) An application for compensation based on criminally injurious conduct that occurred between January 1, 1980, and August 31, 1983, must have been filed with the OAG not later than 180 days from the date of the criminally injurious conduct.

(2) An application for compensation based on criminally injurious conduct that occurred between September 1, 1983 and August 31, 1997, must have been filed with the OAG not later than one year from the date of the criminally injurious conduct.

(3) An application for compensation based on criminally injurious conduct that occurred on or after September 1, 1997 must be filed with the OAG not later than three years from the date of the criminally injurious conduct.

~~[(4) An emergency medical care application based on a forensic medical examination performed on or after September 1, 2015 must be filed within three years of the date of the examination.]~~

(4) [~~(5)~~] In accordance with Texas Code of Criminal Procedure Article 56.37(b), the OAG may extend the time for filing an application upon good cause shown by the claimant or victim. Good cause, as determined by the OAG, includes the following circumstances:

(A) the victim or claimant was not informed about the CVC program by a law enforcement agency, public service agency or service provider and the victim or claimant has not previously applied for or received compensation from the CVC Program;

(B) physical or psychological factors prevented the victim or claimant from filing in a timely manner;

(C) communication barriers existed that prevented the victim or claimant from filing in a timely manner; or

(D) any other circumstance that the OAG considers significant.

(5) [~~(6)~~] In accordance with Texas Code of Criminal Procedure Article 56.37(c), if the victim is a child, the application must be filed within three years from the date the claimant or victim is made aware of the crime but not after the child is 21 years of age.

(6) [~~(7)~~] In accordance with Texas Code of Criminal Procedure Article 56.37(d), the OAG will exclude a period of incapacity from the time to file an application if the victim or claimant:

(A) submits medically documented evidence of a physical or mental incapacity;

(B) the period of incapacity is a result of the criminally injurious conduct; and

(C) the incapacity reasonably prevented the victim or claimant from filing an application within the statutorily prescribed limit in effect on the date of the criminally injurious conduct.

(7) [~~(8)~~] In accordance with Texas Code of Criminal Procedure Article 56.37(e), an application on behalf of a victim of criminal homicide must be filed with the OAG not later than three years after the date the victim's identity is established by a law enforcement agency.

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

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SUBCHAPTER D. REDUCTION, DENIAL OR REFUND OF AN APPLICATION OR AWARD

1 TAC §61.302

STATUTORY AUTHORITY. Section 61.302 is being amended by removing subsections (e) and (f) pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.302. Denying an Application or Award.

(a) An application for compensation shall be denied if:

(1) the criminally injurious conduct is not reported to law enforcement as required by Texas Code of Criminal Procedure Article 56.46;

(2) the application does not satisfy the requirements of Texas Code of Criminal Procedure Articles 56.36 and 56.37;

(3) the victim or claimant knowingly and willingly participated in the criminally injurious conduct as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(3);

(4) the victim or claimant is determined by law enforcement to be the offender or an accomplice as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(4);

(5) an award of compensation to the victim or claimant would benefit the offender or an accomplice as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(5);

(6) the victim or claimant was incarcerated at the time the offense was committed as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(6);

(7) the victim or claimant, as prohibited by Texas Code of Criminal Procedure Article 56.41(b)(7), knowingly or intentionally:

(A) submits, or causes to be submitted by a third party, a material statement or representation of fact that the person knows or intends to be false or forged; or

(B) omits material information in an application or supporting documentation that the person knows or should reasonably know will result in reliance upon the omission.

(b) An application for compensation may be denied under Texas Code of Criminal Procedure Article 56.45 if:

(1) the victim or claimant has not substantially cooperated with the appropriate law enforcement agency;

(2) the victim or claimant is responsible for the act or omission giving rise to the application because of the victim or claimant's behavior and a reduction is not granted under §61.301 of this subchapter (relating to Reducing an Application or Award); or

(3) the victim or claimant was engaging in an activity at the time of the criminally injurious conduct that was prohibited by law, excluding minor traffic offenses or other certain non-violent misdemeanors.

(c) Applications arising out of the criminally injurious conduct of trafficking of persons will not be denied solely because the victim engaged in an activity prohibited by law due to threat, coercion, or intimidation as a part of criminally injurious conduct giving rise to the application.

(d) Under Texas Code of Criminal Procedure Articles 56.311 and 56.45(1), the legislature intended the CVC program to encourage greater public cooperation in the successful apprehension and prosecution of criminals. When determining whether a victim or claimant has substantially cooperated with law enforcement, the OAG will consider the totality of facts and circumstances, including but not limited to:

(1) the victim's physical and mental capacity to participate in the investigation, apprehension and prosecution of the offender or offenders;

(2) whether the victim has provided a true, accurate and complete description of the crime;

(3) the extent to which the victim or claimant has participated in investigative activities;

(4) the extent to which the victim or claimant has participated in the prosecution of the offender; and

(5) whether any delays in substantial cooperation hindered or hampered the successful apprehension and prosecution of the offender.

~~[(e) Emergency medical care applications are not subject to the following:]~~

~~[(1) subsection (a)(1) and (3)-(5) of this section;]~~

~~[(2) subsection (a)(2) of this section to the extent the applicants need not comply with Texas Code of Criminal Procedure Articles 56.36(b)(1), (2) and 56.37; and]~~

~~[(3) subsections (b) and (d) of this section.]~~

~~[(f) An emergency medical care application may be denied based on the following:]~~

~~[(1) the forensic medical examination did not occur in Texas;]~~

~~[(2) the forensic medical examination was conducted before September 1, 2015;]~~

~~[(3) the emergency medical treatment was not incident to the forensic medical examination;]~~

~~[(4) the medical care was not emergency medical treatment; or]~~

~~[(5) the emergency medical treatment was not provided in accordance with Texas Health and Safety Code §323.004.]~~

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

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SUBCHAPTER E. PECUNIARY LOSS

1 TAC §61.401, §61.406

STATUTORY AUTHORITY. Section 61.401 is being amended by removing subsection (b) pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Section §61.406 is being amended by removing subsection (j) pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.401. Applicability.

[~~(a)~~] The OAG shall determine the eligibility, standards, and reasonable limits on compensation for pecuniary losses under Texas Code of Criminal Procedure Article 56.32(a)(9), in a manner consistent with the provisions of this chapter and in accordance with any other controlling provisions of law.

~~[(b) Emergency medical care applications are eligible only for pecuniary losses for medical expenses described in Texas Code of Criminal Procedure Article 56.32(a)(9)(A) incurred for emergency medical treatment and are subject to the limitation described in Texas Code of Criminal Procedure Article 56.42(a).]~~

§61.406. Collateral Sources.

(a) The crime victims' fund is the payer of last resort, according to Texas Code of Criminal Procedure Article 56.34(f). Under Texas Code of Criminal Procedure Articles 56.34(b) and 56.36(b)(3)(B), the OAG may only pay for those actual pecuniary losses that are not paid by a collateral source.

(b) Collateral sources are those benefits or advantages for pecuniary loss specifically described in Texas Code of Criminal Procedure Article 56.32(a)(3) and do not include other possible sources of reimbursement or recovery.

(c) Service providers should seek payment from all collateral sources which might be readily available to the victim or claimant

prior to submitting claims or bills to the OAG, when possible. Service providers shall notify the OAG of all collateral sources being pursued on behalf of the victim or claimant.

(d) The OAG may deny or reduce an award if the OAG notifies the victim, claimant or service provider of a possible collateral source and the victim, claimant or service provider fails to apply or pursue the collateral source within an acceptable time frame for such collateral source. The acceptable time frame will be determined by the OAG upon consideration of all relevant facts and circumstances.

(e) If a service provider receives payment from any other source on behalf of the victim or claimant, the service provider must report the payment and the source to the OAG before receiving reimbursement. If the OAG has already made a payment, the service provider is responsible for notifying the OAG of the amount and the source of the other payment within 10 business days. Payments made to a service provider that reduce the amount of actual pecuniary loss that must be reported to the OAG include, but are not limited to the following: auto insurance; burial insurance; veterans' benefits; worker's compensation; death benefits; foreign consulate payments; gifts, donations and charitable contributions.

(f) Unless good cause exists, a victim or claimant who receives payment, benefits or reimbursement from a collateral source at any time must report that information to the OAG within 30 days.

(g) If the victim or claimant fails to utilize a collateral source that is readily available to the victim or claimant for all or a portion of a pecuniary loss, the OAG may deny or reduce an award to the extent of the unused collateral source.

(h) The OAG may consider good cause shown when determining whether a collateral source is considered readily available to the victim or claimant.

(i) Gifts, donations or charitable contributions made directly to a victim or claimant are not a collateral source and do not reduce the determination of the actual pecuniary losses incurred by the victim or claimant.

~~[(j) Subsections (c), (d), and (g) of this section do not apply to emergency medical care applications except in cases when the collateral source is a federal or federally financed program such as Medicaid or Medicare.]~~

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 I. REIMBURSEMENT TO LAW ENFORCEMENT AGENCIES FOR FORENSIC ASSAULT MEDICAL EXAMINATIONS

1 TAC §§61.801 - 61.804

STATUTORY AUTHORITY. Chapter 61, Subchapter I is being repealed pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.801. Applicability, General Provisions, and Exclusions.
§61.802. Definitions.
§61.803. Reimbursement Procedures for Law Enforcement Agencies.
§61.804. Billing Instructions.

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 K. ADDRESS CONFIDENTIALITY PROGRAM

1 TAC §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1025, 61.1030, 61.1035, 61.1040, 61.1045, 61.1050, 61.1060, 61.1065, 61.1080, 61.1085, 61.1090

STATUTORY AUTHORITY. Chapter 61, Subchapter K is being repealed pursuant to Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§61.1001. Definitions.
§61.1005. Address Confidentiality Program.
§61.1010. Eligibility to Participate in the Address Confidentiality Program.
§61.1015. Application for Participation in the Address Confidentiality Program.
§61.1020. Approval of Application and Certification; Renewal.
§61.1025. Acceptance of Substitute Address.
§61.1030. Denial or Cancellation.
§61.1035. Request for Reconsideration of Denial or Cancellation Determination.
§61.1040. Request for Agency Exemption.
§61.1045. Request for Reconsideration of Exemption Denial Determination.
§61.1050. Exceptions.
§61.1060. Withdrawal From Participation.
§61.1065. Mail That Can Not Be Forwarded.
§61.1080. Destruction of Information.
§61.1085. Voter Registration.
§61.1090. State or Local Agency Responsibility.

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 64. ADDRESS CONFIDENTIALITY PROGRAM

The Office of the Attorney General (OAG) proposes a new Chapter 64 that will address the administration of the Address Confidentiality Program. New Chapter 64 contains the same regulations as the current Chapter 61, Subchapter K, which is being repealed. This is part of a reorganization of the crime victim services rules.

EXPLANATION AND JUSTIFICATION OF RULES

The OAG proposes new Chapter 64 as part of a substantive reorganization of Chapter 61 to conform with the recodification and citation updates to the Texas Code of Criminal Procedure in House Bill 4173, 86th Regular Session (2019). Specifically, the administrative rules currently governing the Address Confidentiality Program (ACP) and sexual assault forensic medical exam compensation are published within the same chapter of administrative rules as the Crime Victims' Compensation (CVC) Program (1 TAC Chapter 61). Under the revised chapters of the Code of Criminal Procedure, however, the CVC Program, the ACP, and sexual assault forensic medical exam compensation are now published in different statutory chapters (Chapters 56A, 56B, and 58). Therefore, new administrative rule chapters are appropriate and more accurately reflect the rulemaking and statutory authorities for these agency functions. OAG proposes to replace current Chapter 61, Subchapter K, which is currently in the process of being repealed, with a new Chapter 64 that will address the administration of the Address Confidentiality Program.

Chapter 64, §§64.1-64.60, as proposed, includes definitions of statutory terms, clarifies agency exemptions and exceptions allowing disclosures, restates program eligibility requirements, describes how participation may be terminated, canceled, or renewed, and outlines the administrative appeal procedures for adverse actions. The proposed rules are identical, or substantially similar, to current Subchapter K of Chapter 61.

Chapter 64 is proposed pursuant to Texas Code of Criminal Procedure articles 56A.256 and 56A.309. Texas Code of Criminal Procedure articles 56A.256 and 56A.309 direct the OAG to adopt rules to implement Title 1, Chapter 56A, Subchapters F and G of the Code of Criminal Procedure.

SECTION-BY-SECTION SUMMARY

Proposed new chapter 64 applies to the creation and administration of the Address Confidentiality Program.

Proposed §64.1 addresses the scope and construction of chapter 64. This proposed section is rephrased from existing §61.1 to reflect the 2019 amendments to the Texas Code of Criminal Procedure Chapter 58. *See also* Tex. Code Crim. Proc. art. 58.052(e).

Proposed §64.2 addresses definitions. This proposed section is almost identical to current §61.1001. One change is that the definition of "victim of family violence" in §61.1001(a)(20) will be deleted due to redundancy. *See also* Tex. Code Crim. Proc. art. 58.051. This section defines terms used in the chapter.

Proposed §64.3 discusses the address confidentiality program. This proposed section is almost identical to current §61.1005. Subsections (a), (b), and (c) are also reorganized from §61.1005(a) and (b). *See also* Tex. Code Crim. Proc. art. 58.052. This rule outlines the types of victims eligible for the program and the duties assigned to the OAG in administering it.

Proposed §64.4 discusses the acceptance of a substitute address. This proposed section is almost identical to current §61.1025. *See also* Tex. Code Crim. Proc. Art. 58.053. Proposed §64.4 requires state or local agencies to accept the ACP post office box in lieu of a true address.

Proposed §64.5 addresses mail that cannot be forwarded. This proposed section is almost identical to current §61.1065. This section limits the ACP to only forward first-class mail. For any non-first-class mail that the ACP receives, ACP staff will take action in accordance with USPS laws.

Proposed §64.6 addresses the destruction of participant information after participation ends. This proposed section has almost identical language to current §61.1080. *See also* Tex. Code Crim. Proc. art. 58.060. The OAG will destroy an ACP participant's information on the third anniversary of the date participation in the ACP ends or after the date an application has been denied.

Proposed §64.7 discusses voter registration. This proposed section is substantially similar to current §61.1085. Participants in the ACP are responsible for complying with all laws and regulations governing voting registration. Language is proposed to cross-reference the Texas Secretary of State website and related rules addressing additional instructions and forms.

Proposed §64.8 concerns state or local agency responsibility. This proposed section has almost identical language to current §61.1090. State and local agencies must comply with the ACP statutes.

Proposed §64.10 addresses ACP requirements. This proposed section has almost identical language to current §61.1015. *See also* Tex. Code Crim. Proc. arts. 58.055 and 58.056. This section outlines the requirements for program participation.

Proposed §64.11 discusses certification of ACP Participation. This proposed section contains almost identical language to current §61.1020. *See also* Tex. Code Crim. Proc. art. 58.059. An ACP authorization card certifies a person's participation.

Proposed §64.20 discusses eligibility to participate in the ACP. This proposed section contains almost identical language to current §61.1010. *See also* Tex. Code Crim. Proc. arts. 58.054 and 58.056. This section describes the statutory eligibility requirements to participate in the program.

Proposed §64.21 addresses participation renewal. This proposed section contains almost identical language to current §64.1020(d). *See also* Tex. Code Crim. Proc. art. 58.059(c). Upon expiration of certification, participants may renew partici-

pation using the same initial incident as the basis for continued eligibility.

Proposed §64.30 concerns ACP participation denial or cancellation. This proposed section contains almost identical language to current §61.1030. *See also* Tex. Code Crim. Proc. arts. 58.057 and 58.058. This section lists the reasons participation may be denied or cancelled.

Proposed §64.31 discusses how to withdraw from the ACP. This proposed section contains almost identical language to current §61.1060. *See also* Tex. Code Crim. Proc. art. 58.058. To withdraw from the ACP, a participant must submit a signed written request.

Proposed §64.40 addresses a request for an agency exemption from accepting the ACP address. This proposed section contains almost identical language to current §61.1040. *See also* Tex. Code Crim. Proc. art. 58.053(b). A state or local agency may request an exemption from accepting the ACP address in lieu of a true address by submitting an explanation and supporting documentation to show exemption is necessary to the OAG.

Proposed §64.41 addresses a request for reconsideration of §64.40 exemption denial determination. This proposed section contains almost identical language to current §61.1045. A state or local agency denied a §64.40 exemption may request reconsideration of the OAG decision within 30 days.

Proposed §64.50 discusses other exceptions to accepting the ACP address. This proposed section updates current §61.1050. *See* Tex. Code Crim. Proc. art. 58.061. This section describes how a law enforcement agency, Texas Department of Family and Protective Services, or the Texas Department of State Health Services may request a participant's true address in certain circumstances. Subsection (c) is revised to remove a reference to the Public Information Act and to direct requests to the Crime Victim Services Division directly by mail, fax, or email to implement Tex. Code Crim. Proc. art. 58.061.

Proposed §64.60 addresses a request for reconsideration of an ACP application. This proposed section is almost identical to current §61.1035. An applicant or participant denied, canceled, or withdrawn from the ACP may request reconsideration of the OAG decision within 30 days.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Gene McCleskey, Chief, Crime Victim Services Division for the agency, has determined that for the first five-year period the proposed rule is in effect, there are no foreseeable costs or revenues for state or local governments as a result of enforcing or administering this rule as proposed because this rule is simply replacing Chapter 61, Subchapter K, without substantive amendments.

PUBLIC BENEFIT AND COST NOTE

Mr. McCleskey has determined that for the first five-year period the proposed rule is in effect, the public cost will be zero because the rule does not add any duties, responsibilities, or expenses which are not already required and appropriated to implement the statute. He further has determined there will be no probable economic cost to persons required to comply with the chapter because the substitution of one address for the P.O. Box will have the same expense.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

There is no effect on any local economy for the first five years the proposed rule is in effect because the rule does not add any duties, responsibilities, or expenses which are not already required since the rule only reorganizes current regulations. Therefore, no economic impact statement or local employment impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. McCleskey has also determined that there will not be an impact on rural communities, small businesses, or micro-businesses resulting from implementation of the proposed rule. The rule does not add any duties, responsibilities, or expenses since it merely reorganizes current regulations. Therefore, no regulatory flexibility analysis is required, as specified in Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the proposed rule is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not result in an increase or decrease in the number of agency employees;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not lead to an increase or decrease in fees paid to a state agency;

- will create a new regulation;

- will not repeal an existing regulation;

- will not result in an increase or decrease in the number of individuals subject to the rule; and

- will not positively or adversely affect the state's economy because it is reorganizing an existing chapter that is already in effect.

REQUEST FOR PUBLIC COMMENT

Written comments on the proposed rule may be submitted electronically to Kristen D. Huff, Assistant Attorney General, Crime Victim Services Division by email to Kristen.Huff@oag.texas.gov or by mail to Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. The OAG will consider any written comments on the proposal that are received by OAG no later than 5:00 p.m., central time, on May 16, 2022.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to Kristen.Huff@oag.texas.gov or by mail to Crime Victim Services

Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§64.1 - 64.8

STATUTORY AUTHORITY. New chapter 64, Subchapter A is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.1. Scope and Construction of Rules.

This chapter applies to the administration of the Texas Address Confidentiality Program (ACP) created by Texas Code of Criminal Procedure chapter 58,subchapter B. The Office of the Attorney General (OAG) adopts this chapter pursuant to Texas Code of Criminal Procedure article 58.052 and consistent with chapter 58, subchapter B.

§64.2. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings:

(1) "Applicant" is a person who submits an application to the OAG to enroll in the ACP.

(2) "Application" is the document requesting to participate in the ACP, including all information and documents submitted by, or on behalf of, the applicant.

(3) "Certification" means OAG authorization for an applicant to participate in the ACP.

(4) "Certified mail" is any first-class letter-size or flat-size mail for which the mailer pays a surcharge to the United States Postal Service (USPS) to be provided with a receipt, and the USPS records delivery of the mail. Certified mail does not include a package regardless of size or type of mailing.

(5) "Counseling" means victim-related guidance, advice, and support with crisis intervention, obtaining information, legal advocacy, prevention of further harm, or meeting other physical, emotional, or psychological needs.

(6) "Family violence" has the same definition as in Texas Family Code §71.004.

(7) "First Class Mail" is designated by the USPS as:

(A) Letter-size mail, as defined in the USPS Domestic Mail Manual, is mail that is not less than 5 inches long or more than 11 1/2 inches long, and not less than 0.007 inches thick or more than 1/4 inch thick. Letter-size mail may not weigh more than 3.5 ounces.

(B) Flat-size mail, as defined in the USPS Domestic Mail Manual, is mail not more than 15 inches long, more than 12 inches high or more than 3/4 inches thick. Flat-size mail may not weigh more than 13 ounces.

(8) "Household" is a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other, as defined in Texas Family Code §71.005.

(9) "Other entity" means an organization or group, whether for profit or nonprofit, that provides the services of a victim's assistance counselor, counseling, or shelter services to victims of family violence, sexual assault, stalking, or trafficking of persons.

(10) "Package" must have the same meaning as parcel, as defined in the USPS Domestic Mail Manual. Parcel is mail that does not meet the mail processing category of letter-size mail or flat-size mail.

(11) "Participant" is a person who has applied and been enrolled into the ACP, including all members of the applicant's household whose address is the same.

(12) "Sexual offense" includes the terms "sexual assault" as defined in Texas Penal Code §22.011, "aggravated sexual assault" as defined in Texas Penal Code §22.021, or "prohibited sexual conduct" as defined in Texas Penal Code §25.02.

(13) "Shelter services" are provided directly, by referral, or through formal arrangements with other agencies and include:

(A) 24-hour-a-day shelter;

(B) a crisis hotline available 24 hours a day;

(C) emergency medical care;

(D) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans;

(E) emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights, and legal options, as well as providing support and accompaniment in pursuing those options;

(G) information about educational arrangements for children;

(H) information about training for and seeking employment; or

(I) a referral system to existing community services.

(14) "Stalking" has the meaning assigned by Texas Penal Code §42.072.

(15) "State or local agency" includes, but is not limited to, a governmental agency of the State of Texas or a Texas county, city, town, or municipality.

(16) "Texas resident" is a person who has a domicile in, lives for more than a temporary period, or who can show intent to establish a domicile in Texas either at the time of the crime or during the duration of participation in the program. Documentary evidence of the applicant's Texas residency may be established by submitting the following documentation in the name of the applicant:

(A) a lease or rental agreement;

(B) utility bills;

(C) school or work records;

(D) a driver's license;

(E) postmarked mail delivered to the applicant at the Texas residence or intended Texas residence;

(F) written verification from a victim's assistance counselor; or

(G) other documentation approved by the OAG.

(17) "Trafficking of Persons" has the meaning assigned by Texas Code of Criminal Procedure Article 58.001(11).

(18) "True Address is the physical address where the applicant actually resides, is employed, or attends school.

(19) "Victim's Assistance Counselor" is an individual authorized by a state or local agency or other for profit or nonprofit entity to meet with or assist individuals applying for participation in the ACP.

(b) The definitions in this chapter will be given their most reasonable meaning unless the content clearly indicates otherwise.

§64.3. Address Confidentiality Program (ACP).

(a) The ACP assists victims of family violence, sexual offenses, stalking, and trafficking of persons by authorizing the use of an OAG-maintained confidential mailing address.

(b) The OAG will:

(1) designate a substitute post office box address for participants to use in place of the participant's true residential, business, or school address;

(2) act as agent to receive service of process and mail on behalf of the participant; or

(3) forward to the participant first-class mail.

(c) The OAG will not forward packages.

(d) A summons, writ, notice, demand, or process may be served on the OAG on behalf of the participant by delivery of two copies of the document to the OAG. The OAG will retain a copy of the summons, writ, notice, demand, or process and forward the original to the participant via first class or certified mail not later than the third day after the date of service on the OAG.

(e) The OAG may not make a copy of a participant's mail received by the OAG, except that the OAG will retain a copy of the envelope in which certified mail is received on behalf of the participant.

(f) The attorney general or an agent or employee of the attorney general is immune from liability for any act or omission by the agent or employee in administering the ACP if the agent or employee was acting in good faith and within the course and scope of assigned responsibilities and duties.

(g) An agent or employee of the attorney general who does not act in good faith and within the course and scope of assigned responsibilities and duties in disclosing a participant's true residential, business, or school address is subject to prosecution under Chapter 39, Texas Penal Code.

(h) The OAG is not responsible for updating or modifying the participant's public records regarding the substitute address. ACP participants remain personally responsible for compliance with all applicable federal, state, and local laws and regulations, including those which require a physical address.

(i) The OAG is not responsible for tracking or otherwise maintaining mail or records of mail received on behalf of a participant.

(j) The OAG is not responsible for notifying any person or entity of the expiration or cancellation of the participant's participation in the ACP.

(k) Upon a final determination of the expiration or cancellation of the participant's participation in the ACP, the OAG will return the participant's mail to sender.

§64.4. Acceptance of Substitute Address.

A state or local agency must accept the substitute post office box address designated by the OAG if the substitute address is presented to the agency by a participant in place of the participant's true residential, business, or school address.

§64.5. Mail That Cannot Be Forwarded.

The OAG will forward only first-class mail to a participant. For any non-first-class mail that OAG receives, OAG will take action in accordance with USPS laws, regulations, and guidelines, including, but not limited to, returning mail to the sender or refusing to accept delivery of such mail.

§64.6. Destruction of Information.

(a) The OAG will destroy all information relating to a participant on the third anniversary of the date participation in the ACP ends.

(b) The OAG will destroy all information relating to a denied application on the third anniversary of the date of the denial.

§64.7. Voter Registration.

A participant who desires to register to vote is responsible for compliance with the requirements of the registrar of the county in which the participant resides and all other applicable federal, state, and local laws and regulations. Instructions and forms for are published online by the Secretary of State. The rules applying to confidentiality of voting records for ACP participants are in Texas Administrative Code, Title 1, Chapter 81, §81.38(b).

§64.8. State or Local Agency Responsibility.

A state or local agency that accepts an ACP participant's substitute post office box address is responsible for the administration of its rules and regulations in compliance with Texas Code of Criminal Procedure Chapter 58.

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

Filed with the Office of the Secretary of State on April 4, 2022.

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Austin Kinghorn
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1200

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SUBCHAPTER B. APPLICATION FOR ADDRESS CONFIDENTIALITY PROGRAM PARTICIPATION

1 TAC §64.10, §64.11

STATUTORY AUTHORITY. New chapter 64, Subchapter B is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.10. Requirements.

(a) An application must be submitted through the form published on the OAG website, and must be signed, dated, and affirm the following:

(1) the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because

of threat of immediate or future harm by a person alleged to have committed family violence, a sexual offense, stalking, or trafficking of persons;

(2) the applicant lives at, or will relocate to, a residential address that is, to the best of their knowledge, unknown to the person who committed the alleged family violence, sexual offense, stalking, or trafficking of persons;

(3) if there is an existing court order or a pending court case for child support or child custody or visitation that involves the applicant, the name of the legal counsel of record and each parent involved in the court order or pending case; and

(4) the applicant designates the OAG as agent to receive service of process and mail on behalf of the applicant.

(b) In addition to the application, the OAG may require an applicant to submit independent documentary evidence that family violence, a sexual offense, stalking, or trafficking of persons occurred. Independent documentary evidence may include, but is not limited to:

(1) an active or recently issued protective order;

(2) an incident report or other record maintained by a law enforcement agency or official;

(3) a statement from a physician or other health care provider regarding the applicant's medical condition as a result of the family violence, sexual offense, stalking, or trafficking of persons;

(4) a statement from a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, sexual offense, stalking, or trafficking of persons; or

(5) any other information the OAG deems appropriate.

§64.11. Certification of Address Confidentiality Program Participation.

(a) The OAG will review and, if appropriate, approve the applicant's application and certify the applicant's participation in the ACP.

(b) Upon certification into the ACP, the OAG will issue an ACP authorization card (ACP card) to the ACP participant. The ACP card is valid as long as the ACP participant remains certified under the ACP.

(1) An ACP card is property of the OAG and must be surrendered or destroyed upon cancellation of participation in the ACP.

(2) An ACP card is an official governmental record and is void if altered, sold, or damaged.

(3) Participants may request a new ACP card in the event the card is lost, stolen, or destroyed.

(4) The OAG may issue and replace ACP cards upon certification or request for a replacement ACP card.

(c) Certification for participation in the ACP expires on the third anniversary of the date of certification.

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

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SUBCHAPTER C. PROGRAM ELIGIBILITY

1 TAC §64.20, §64.21

STATUTORY AUTHORITY. New chapter 64, Subchapter C is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.20. Eligibility to Participate in the Address Confidentiality Program.

(a) An applicant is eligible for participation in the ACP if:

(1) they have met with a victim's assistance counselor from an entity that is identified by the OAG as one that provides shelter housing, civil legal services, or counseling to victims of family violence, sexual assault or abuse, stalking, or trafficking of persons;

(2) they or a household member are protected under, or have filed an application for an order of protection, under:

(A) a temporary injunction issued under Subchapter F, Chapter 6, Texas Family Code;

(B) a temporary ex parte order issued under Chapter 83, Texas Family Code;

(C) an order issued under Subchapter A or B, Chapter 7B, of Texas Code of Criminal Procedure or Chapter 85, Texas Family Code; or

(D) a magistrate's order for emergency protection issued under Article 17.292, Texas Code of Criminal Procedure; or

(3) they possess other documentation as described in §64.10 of this chapter.

(b) If an applicant does not submit supporting documentation and relies upon a certification by a crime victim service provider, the applicant must:

(1) meet with a crime victim assistance counselor from a state or local agency or other entity;

(2) file the application from or through that agency; and

(3) include the name, title, and signature of the crime victim assistance counselor or advocate who met with and assisted the applicant in the preparation of the application.

§64.21. Renewal of Participation.

To renew a certification under Texas Code of Criminal Procedure Article 58.059(c), an ACP participant must submit a new application that complies with §64.10 of this title (relating to Requirements). An applicant may use the same incident of family violence, sexual offense, stalking, or trafficking of persons as the basis for renewal of their application for participation. An application for renewal will be treated as an original 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. PARTICIPATION TERMINATION

1 TAC §64.30, §64.31

STATUTORY AUTHORITY. New chapter 64, Subchapter D is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.30. Denial or Cancellation.

(a) A participant may be excluded from participation in the ACP if:

(1) mail forwarded to the participant by the OAG is returned as undeliverable on at least four occasions;

(2) the participant changes the participant's true residential address as provided in the application filed by the participant, and does not submit an OAG Change of Address form notifying the OAG at least 10 business days before the date of the address change; or

(3) the participant changes the participant's name.

(b) If an application for the ACP is denied or participation in the ACP is cancelled, the OAG will send the applicant or participant a written determination and reason for the denial or cancellation.

§64.31. Participation Withdrawal.

A participant may withdraw from participation in the ACP at any time by submitting a signed written request. A Withdrawal Form is located on the OAG website but is not required.

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

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SUBCHAPTER E. GOVERNMENTAL AGENCY EXEMPTIONS

1 TAC §64.40, §64.41

STATUTORY AUTHORITY. New chapter 64, Subchapter E is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.40. Request for Agency Exemption.

(a) An agency may seek an exemption determination from the OAG under Texas Code of Criminal Procedure Article 58.053(a) to require a participant to provide the participant's true residential, business, or school address. To seek an exemption determination, the agency must file an OAG Request for Agency Exemption form that includes, but is not limited to, the following information:

(1) the name of the agency along with an explanation and supporting documentation that shows the exemption is necessary for the agency to perform a duty or function that is imposed by law or administrative requirement;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) verification that the requestor will maintain the confidentiality of the participant's true residential, business, or school address; and

(4) verification by the agency representative affirming that the information submitted is correct.

(b) The OAG may require additional information deemed necessary by the OAG.

(c) The OAG will issue a written determination as soon as practicable.

(d) An agency may submit a request for an exemption determination at any time even if there is no current need for the exemption at the agency.

(e) An agency previously denied an exemption may reapply in the event of new information.

§64.41. Request for Reconsideration of Exemption Denial.

(a) If an agency is denied an exemption under Texas Code of Criminal Procedure Article 58.053(b), an agency has 30 days from the date of the exemption denial to submit a written request for reconsideration to the OAG, along with supporting documentation. The OAG may require additional information as deemed necessary.

(b) The OAG will issue a written determination on the agency's request for reconsideration based on the evidence submitted.

(c) The OAG's decision is final.

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. ADDRESS DISCLOSURE EXCEPTIONS

1 TAC §64.50

STATUTORY AUTHORITY. New chapter 64, Subchapter F is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.50. Exceptions.

(a) Pursuant to Texas Code of Criminal Procedure Article 58.061, the OAG will disclose a participant's true residential, business, or school address if requested by:

(1) a law enforcement agency;

(2) the Department of Family and Protective Services for the purpose of conducting a child protective services investigation under Texas Family Code Chapter 261; or

(3) the Department of State Health Services or a local health authority for the purpose of making a notification of a communicable disease described under Texas Code of Criminal Procedure Article 21.31, Texas Family Code §54.033, or Texas Health and Safety Code §81.051.

(b) Pursuant to Texas Code of Criminal Procedure Article 58.104, the OAG will disclose a participant's true residential, business, or school address if required by a court order.

(c) A request for disclosure of a participant's true residential, business, or school address from an agency pursuant to this section must be submitted to the Address Confidentiality Program via mail, fax, or email, along with any supporting documentation, such as the following information:

(1) the name of the agency requesting the disclosure and the statutory exception upon which the agency bases its request;

(2) the name and title of the individual authorized to make the request on behalf of the agency;

(3) a signed statement by the agency representative affirming that the information submitted is correct; and

(4) an original certified copy of the court order, if applicable.

(d) The OAG may require additional information as deemed necessary.

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. ADMINISTRATIVE REMEDIES

1 TAC §64.60

STATUTORY AUTHORITY. New chapter 64, Subchapter G is proposed pursuant to the Texas Code of Criminal Procedure article 58.052. Article 58.052 directs the Attorney General to adopt rules to administer an address confidentiality program to assist a victim of family violence, sexual assault or abuse, stalking, or trafficking of persons in maintaining a confidential address.

CROSS-REFERENCE TO STATUTE. No other regulations or statutes are affected by this proposed change.

§64.60. Request for Reconsideration.

(a) An ACP applicant or participant has 30 days from the date of the OAG's denial or cancellation to seek reconsideration. The OAG may require additional information as deemed necessary. If the applicant or participant fails to seek reconsideration within the 30-day time period, the decision of the OAG becomes final.

(b) The OAG will issue a written determination on the request for reconsideration based on the evidence submitted.

(c) The OAG's determination on the request for reconsideration is final.

(d) If an application for the ACP is denied or participation in the ACP is cancelled, the applicant or participant may reapply in the event of a new qualifying incident.

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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 299. DAMS AND RESERVOIRS

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§299.1, 299.2, 299.7

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§299.1, 299.2, and 299.7.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules to add the language of Senate Bill (SB) 600, 87th Texas Legislature (2021), Author: Perry, requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Language requiring dam exemptions from House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith, and HB 677, 83rd Texas Legislature (2013), Author: Geren, has been added. The recent audit report findings on the Dam Safety Program by Texas State Auditor's Office, issued July 2020, recommended that the language of these two bills be included in the rules.

Revisions will also be made to clarify language in the rules.

Section by Section Discussion

Subchapter A: General Provisions

The commission proposes to amend §299.1 (Applicability) by clarifying language to better define a dam. There has been confusion on what constitutes a dam.

The commission proposes to amend the figure located in §299.1(a)(2) to clarify the applicability of the rules to a dam.

The commission proposes to add §299.1(c)(6) to include language from HB 677 for exemption of dams if the dam meets all five of the criteria listed in the proposed rule: (1) is located on private property; (2) at maximum capacity impounds less than 500 acre-feet; (3) has a hazard classification of low or significant; (4) is located in a county with a population of less than 350,000; and (5) is not located inside the corporate limits of a municipality.

The commission proposes to revise the language for the definitions of main highways (§299.2(33)), minor highways (§299.2(38)), and secondary highways (§299.2(59)) to better define each for use in hazard classifications.

The commission proposes to revise the definition of "removal" in §299.2(54) to clarify and be consistent with the definition in the *Dam Removal Guidelines for Dams in Texas.*

The commission proposes to revise the language for the Inventory of Dams in §299.7 to better define what is in the inventory and to remove language for items that are not included.

The commission proposes to add §299.7(b)(1) and (2), after reformatting, and add "a" to §299.7, to include language from SB 600 that each river authority, designated in Section 325.025(b), Government Code, shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam: (1) location of the dam; (2) under whose jurisdiction the dam operates; (3) required maintenance schedule for the dam; (4) costs of the operation and maintenance of the dam; and (5) method of finance for operations and maintenance costs of the dam.

The commission proposes to add §299.7(b)(3) to require the river authorities to submit the information annually.

The commission proposes to add §299.7(b)(4) to require the TCEQ to create and maintain an internet website to contain the information, subject to federal and state confidentiality laws.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant 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.

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 compliance with state law and improved public access to information about certain dams under the control of river authorities. 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 rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do 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, or require an increase or decrease in fees paid to the agency. The proposed rulemaking does alter an existing regulation requiring additional information about certain dams under the control of river authorities. In compliance with state law, the regulations decrease the number of individuals subject to its authority by exempting certain dams from its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which

is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to amend existing rules to add the language of Senate Bill (SB) 600, Perry, 87th Texas Legislature (2021), requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of dams ; 2) does not exceed any express requirements of state law related to the regulation of dams; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency. Since this proposed rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the proposed rules would constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Sections 17 or 19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission determined that these proposed rules would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the proposed rules would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the proposed rules; the proposed rules are solely procedural and do not impact real property.

Consistency with the Coastal Management Program

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

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

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal on May 17, 2022, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, staff will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by Friday, May 13, 2022. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on May 16, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTY4NTYwNjktYTM2NC00OGVmLWEwN-DUtZWE3NDg2NTk4NDhh%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-

469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

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

Submittal of Comments

Written comments may be submitted to Cecilia Mena, 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 2021-027-299-CE. The comment period closes on May 17, 2022. Please choose one of the methods provided to submit your written comments.

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 Warren Samuelson, Critical Infrastructure Division, (512) 239-5195.

Statutory Authority

These amendments are proposed under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; §5.013, which establishes the commission's authority over various statutory programs, such as dam safety; §5.103 and §5.105, which establish the commission's general authority to adopt rules; and §12.052, which establishes the commission's authority to promulgate rules for the safe construction, maintenance, repair, and removal of dams located in this state.

These proposed amendments implement Senate Bill 600, 87th Texas Legislature (2021), Author: Perry; House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith; and HB 677, 83rd Texas Legislature (2013), Author: Geren.

§299.1. Applicability.

(a) This chapter applies to design, review, and approval of construction plans and specifications; and construction, operation and maintenance, inspection, repair, removal, emergency management, site security, and enforcement of dams that:

(1) have a height greater than or equal to 25 feet and a maximum storage capacity greater than or equal to 15 acre-feet, as described in paragraph (2) of this subsection;

(2) have a height greater than six feet and a maximum storage capacity greater than or equal to 50 acre-feet;
Figure: 30 TAC §299.1(a)(2)
[~~Figure: 30 TAC §299.1(a)(2)~~]

(3) are a high- or significant-hazard dam as defined in §299.14 of this title (relating to Hazard Classification Criteria), if over 6 feet high, regardless of [~~height or~~] maximum storage capacity; or

(4) are used as a pumped storage or terminal storage facility.

(b) This chapter provides the requirements for dams, but does not relieve the owner from meeting the requirements in Texas Water Code (TWC), Chapter 11, and Chapters 213, 295, and 297 of this title (relating to Edwards Aquifer; Water Rights, Procedural; and Water Rights, Substantive; respectively). All applicable requirements in those chapters will still apply.

(c) This chapter does not apply to:

(1) dams designed by, constructed under the supervision of, and owned and maintained by federal agencies such as the Corps of Engineers, International Boundary and Water Commission, and the Bureau of Reclamation;

(2) embankments constructed for roads, highways, and railroads, including low-water crossings, that may temporarily impound floodwater, unless designed to also function as a detention dam;

(3) dikes or levees designed to prevent inundation by floodwater;

(4) off-channel impoundments authorized by the commission under TWC, Chapter 26; [~~and~~]

(5) above-ground water storage tanks (steel, concrete, or plastic); and

(6) exempt dams authorized under TWC, Chapter 12. A dam is exempt from this chapter if it meets all of the following:

(A) is located on private property;

(B) has a maximum capacity of less than 500 acre-feet, the capacity at the top of the dam as defined in 30 TAC §299.2(36);

(C) has a hazard classification of low or significant as defined in 30 TAC §299.14;

(D) is located in a county with a population of less than 350,000 based on the most current U. S. Census numbers; and

(E) is not located inside the corporate limits of a municipality, as based on the most current municipal information.

(d) All dams must meet the requirements in this chapter, including dams that do not require a water right permit, other dams that are exempt from the requirements in Subchapter C of this chapter (relating to Construction Requirements), and dams that are granted an exception as defined in §299.5 of this title (relating to Exception).

§299.2. Definitions.

The following words and terms in this section are in addition to the definitions in §3.2 of this title (relating to Definitions). The words and terms in this section, when used in this chapter, have the following meanings.

(1) Abandon--The owner no longer maintaining a dam for a period of ten years, or refusing to maintain the dam.

(2) Accepted engineering practices--The application of design and analysis methods that are commonly used by professional engineers in their field of expertise and are well documented in published design manuals, codes of practice, text books, and engineering journals.

(3) Alteration--Any change to a dam or appurtenant structures that affects the integrity, safety, and operation of the dam, including, but not limited to:

(A) changing the height of a dam;

(B) increasing the normal pool or principal spillway elevation, or changing the hydraulic capability of the principal spillway; or

(C) changing the original elevation, physical dimensions, or hydraulic capability of an emergency spillway.

(4) Appurtenant structures--The outlet works and controls, spillways and controls, gates, valves, siphons, access structures, bridges, berms, drains, hydroelectric facilities, instrumentation, and other structures related to the operation of a dam.

(5) Breach--An excavation or opening, either controlled or a result of a failure of the dam, through a dam or spillway that is capable of completely draining the reservoir down to the approximate original topography so the dam will no longer impound water, or partially draining the reservoir to lower impounding capacity.

(6) Breach analysis--The analysis of potential dam failure scenarios, including overtopping and piping (magnitude, duration, and location), using accepted engineering practices, to evaluate downstream hazard potential or to develop inundation maps.

(7) Breach inundation area--An area that would be flooded as a result of a dam failure.

(8) Closure of dam--The commencement of placing material within the closure section of the dam.

(9) Closure section--The section of the dam left open during construction of a proposed dam in order to pass floodwaters through the dam without endangering the dam.

(10) Commence construction--An actual, visible activity beyond planning or land acquisition that initiates the beginning of the construction of a dam in the manner specified in the approved construction plans and specifications for that dam. The action must be performed in good faith with the intent to continue with the construction through completion.

(11) Conceptual design--A design that presents a location and proposed plan of the dam and appurtenant structures and elevations of all pertinent features of the dam.

(12) Construction--Building a proposed dam and appurtenant structures capable of storing water.

(13) Construction change order--A document recommended by the owner's professional engineer and signed by the owner's contractor and the owner that authorizes a significant addition, deletion, or revision of the approved construction plans and specifications that has a material impact on the safety and integrity of the dam.

(14) Dam--Any barrier or barriers, with any appurtenant structures, constructed for the purpose of either permanently or temporarily impounding water.

(15) Dam failure--breach and uncontrolled release of the reservoir.

(16) Deficient dam--A dam that fails to meet the requirements of this chapter and poses a significant threat to human life or property.

(17) Deliberate impoundment--The intentional impoundment of water in the reservoir, including:

(A) closing the lowest planned outlet or spillway;

(B) blocking the diversion works that are used during construction to divert water around the construction area; and

(C) beginning the closure of the dam.

(18) Design flood--The flood used in the design and evaluation of a dam and appurtenant structures, particularly for determining the size of spillways, outlet works, and the effective crest of the dam.

(19) Detention dam--A dam that has an impoundment that is normally dry and has an ungated outlet structure that is designed to completely drain the water impounded during a flood within five days.

(20) Drawdown--The change in surface elevation of a reservoir due to a withdrawal of water from the reservoir.

(21) Effective crest of the dam--The elevation of the lowest point on the crest (top) of the dam, excluding spillways.

(22) Emergency action plan--A written document prepared by the owner or the owner's professional engineer describing a detailed plan to prevent or lessen the effects of a failure of the dam or appurtenant structures.

(23) Emergency repairs--Any repairs, considered to be temporary in nature, necessary to preserve the integrity of the dam and prevent a possible failure of the dam.

(24) Emergency spillway--An auxiliary spillway designed to pass a large, but infrequent, volume of flood flow, with a crest elevation higher than the principal spillway or normal operating level.

(25) Engineering inspection--Inspection performed by a professional engineer, or under the supervision of a professional engineer, to evaluate the condition, safety, and integrity of the dam and appurtenant structures to determine if the dam and appurtenant structures meet applicable rules and accepted engineering practices, including a field inspection and review of records for design, construction, and performance.

(26) Enlargement--Any change in, or addition to, an existing dam or reservoir that raises, or may raise, the normal storage capacity of the reservoir impounded by the dam.

(27) Existing dam--Any dam under construction or completed as of the effective date of these rules.

(28) Fetch--The straight-line distance across a reservoir subject to wind forces.

(29) Hazard classification--A measure of the potential for loss of life, property damage, or economic impact in the area downstream of the dam in the event of a failure or malfunction of the dam or appurtenant structures. The hazard classification does not represent the physical condition of the dam.

(30) Height of dam--The difference in elevation between the natural bed of the watercourse or the lowest point on the downstream toe of the dam, whichever is lower, and the effective crest of the dam.

(31) Inundation map--A map delineating the area that would be flooded by a particular flood event, or a dam failure.

(32) Loss of life--Human fatalities that would result from a failure of the dam, without considering the mitigation of loss of life that could occur with evacuation or other emergency actions.

(33) Main highways--Roads classified as an [~~a rural~~] arterial system by the Texas Department of Transportation, including interstate highways, United States highways, and state highways, listed as either interstate or principal or minor arterial.

(34) Maintenance--Those tasks that are generally recurring and are necessary to keep the dam and appurtenant structures in a sound condition, free from defect or damage that could hinder the dam's functions as designed, including adjacent areas that also could affect the function and operation of the dam.

(35) Maintenance inspection--Visual inspection of the dam and appurtenant structures by the owner or owner's representative to

detect apparent signs of deterioration, other deficiencies, or any other areas of concern.

(36) Maximum storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the effective crest of the dam. For purposes of calculating maximum storage capacity for the Inventory of Dams as described in §299.7 of this title (relating to Inventory of Dams), only water that can be stored above natural ground level (not in excavations in the reservoir) or that could be released by a failure of the dam is considered in assessing the storage volume. The maximum storage capacity may decrease over time due to sedimentation or increase if the reservoir is dredged.

(37) Minimum freeboard--The difference in elevation between the effective crest of the dam and the maximum water surface elevation resulting from routing the design flood appropriate for the dam.

(38) Minor highways--Roads not classified as a main or secondary highway as defined in this subsection [~~rural collector road or rural local road by the Texas Department of Transportation~~], including county roads and Farm-to-Market roads not used to provide service to schools.

(39) Modification--Any structural alteration of a dam, the spillways, the outlet works, or other appurtenant structures that could influence or affect the integrity, safety, and operation of the dam.

(40) Normal storage capacity--The volume, in acre-feet, of the impoundment created by the dam at the lowest uncontrolled spillway crest elevation, or at the maximum elevation of the reservoir at the normal (non-flooding) operating level.

(41) NAD83 conus datum--The North American Datum of 1983 is a reference system used to obtain the spherical coordinates of a point on the earth's surface. The standard North American Datum of 1983, or any future updates, must be used for all latitude and longitude measurements.

(42) NAVD88 datum--The North American Vertical Datum of 1988 is a reference system used to obtain vertical measurements on the earth's surface. The North American Vertical Datum of 1988 must be used for all vertical measurements recorded with a global positioning system receiver.

(43) Outlet--A conduit or pipe controlled by a gate or valve, or a siphon, that is used to release impounded water from the reservoir.

(44) Owner--Any person who can be one or more of the following:

(A) holds legal possession or ownership of an interest in a dam;

(B) is the fee simple owner of the surface estate of the tract of land on which the dam is located if actual ownership of the dam is uncertain, unknown, or in dispute unless the person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the dam is owned by another person or persons;

(C) is a sponsoring local organization that has an agreement with the Natural Resources Conservation Service for a dam constructed under the authorization of the Flood Control Act of 1944 (as amended), Public Law 78-534, the Watershed Protection and Flood Prevention Act, 1954 (as amended), Public Law 83-566, the pilot watershed program under the Flood Prevention of the Department of Agriculture Appropriation Act of 1954, Public Law 156-67, or Subtitle H of Title XV of the Agriculture and Flood Act of 1981, the Resource Conservation and Development Program; or

(D) has a lease, easement, or right-of-way to construct, operate, or maintain a dam.

(45) Piping--The progressive removal of soil particles from a dam by percolating water, leading to development of channels or flow paths.

(46) Principal spillway--Also commonly referred to as the service spillway, the [~~The~~] primary or initial spillway engaged during a rainfall runoff event that is designed to pass normal flows.

(47) Probable maximum flood (PMF)--The flood magnitude that may be expected from the most critical combination of meteorologic and hydrologic conditions that are reasonably possible for a given watershed.

(48) Probable maximum precipitation (PMP)--The theoretically greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular geographical location at a certain time of the year.

(49) Professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the state of Texas, with experience in the investigation, design, construction, repair, and maintenance of dams.

(50) Proposed dam--Any dam not yet under construction.

(51) Pumped storage dam--A rectangular or circular embankment used to store water pumped from another source.

(52) Reconstruction--Removal and replacement of an existing dam or appurtenant structures.

(53) Rehabilitation--The completion of all work necessary to extend the service life of a dam and meet the safety and performance standards of this chapter.

(54) Removal--The complete elimination of a dam, the appurtenant structures, and the reservoir to its natural channel by removing enough of the dam to the extent that no water can be either permanently impounded, nor temporarily detained, by the dam (no significant differential between the upstream and downstream water surface elevations) during normal conditions, as well as during the design flood of the dam [~~or reservoir and the approximate original topography of the dam and reservoir area is restored~~].

(55) Repairs--Any work done on a dam that may affect the integrity, safety, and operation of the dam, including, but not limited to:

(A) excavation into the embankment fill or foundation of a dam; or

(B) removal or replacement of major structural components of a dam or appurtenant structures.

(56) Reservoir--A body of water impounded by a dam.

(57) Safe manner--Operating and maintaining a dam in sound condition, free from defect or damage that could hinder the dam's functions as designed.

(58) Seal--To affix a professional engineer's seal to each sheet of construction plans or to an engineering report or required document.

(59) Secondary highways--Roads classified as a [~~rural~~] major or minor collector road by the Texas Department of Transportation, including Farm-to-Market roads used to provide service to schools.

(60) Secure location--A building that is locked and accessible to the owner and owner's representative.

(61) Spillway--An appurtenant structure that conducts outflow from a reservoir.

(62) Sponsoring local organization--any political subdivision of the state, or other entity, with the authority to carry out, maintain, or operate work of improvement installed with the assistance of the federal government.

(63) Stability analysis--The analytical procedure for determining the most critical factor of safety for a slope.

(64) Substantially complete--A dam under construction that is complete except for minor correction of items identified in the final construction inspection and that can be operated in a safe manner to the dam's full functional capability.

§299.7. Inventory of Dams.

(a) The executive director shall maintain an inventory of dams that includes information on:

(1) ownership;

(2) physical dimensions of the dam;

(3) hazard classification;

(4) normal and maximum storage capacity;

(5) hydraulic data [~~use of reservoir, including the water rights permit, if applicable~~];

(6) inspection date;

(7) location; [~~and~~]

(8) condition of the dam;[~~.~~]

(9) emergency action plan status; and

(10) design dates.

(b) Inventory of dams operated by river authorities.

(1) This section applies only to a river authority described by Section 325.025(b), Government Code.

(2) Each river authority shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam:

(A) the location of the dam;

(B) under whose jurisdiction the dam operates;

(C) a required maintenance schedule for the dam;

(D) costs of the operation and maintenance of the dam; and

(E) the method of finance for the operation and maintenance costs of the dam.

(3) A river authority shall submit the information required by paragraph (2) of this subsection to the executive director each year and in the event of a significant change in the information.

(4) Subject to federal and state confidentiality laws, the executive director shall create and maintain an Internet website that contains the information collected under this section.

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

Filed with the Office of the Secretary of State on April 1, 2022.

TRD-202201141
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 15, 2022
For further information, please call: (512) 239-0600

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to §§21.31, 21.37, 21.38, 21.40, and 21.41, concerning Utility Accommodation, and the repeal of §§21.921 - 21.930, concerning Utility Relocation Prepayment Funding Agreements.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

Senate Bill 507, Acts of the 87th Legislature, Regular Session, 2021, requires that the Texas Transportation Commission (commission) adopt rules to provide for broadband providers use of state highway right-of-way. This bill triggered a review of the department's rules regarding utility accommodation within state right-of-way. The review resulted in this rulemaking revising Chapter 21, Subchapter C, Utility Accommodation, to provide for accommodation of broadband services and to address advances in technology and current construction practices and safety standards for all utility installations within state right-of-way. The proposed revisions are in the interests of safety, protection, use, and future development of the state highway system with due consideration given to the public service afforded by adequate and economical utility facilities.

The review also revealed the need to repeal Chapter 21, Subchapter P, Utility Relocation Prepayment Funding Agreements, which addresses a utility relocation prepayment funding program under Transportation Code, §203.0922, which expired September 1, 2013.

Amendments make various changes throughout Chapter 21, Subchapter C, to correct minor wording errors and to provide consistency within the subchapter in the use of "shall," "may," and "must" by aligning the use of those words with the statutory construction rules set out in Government Code, §311.016.

Amendments to §21.31, Definitions, adds definitions for ASCE (American Society of Civil Engineers), broadband service, communication line, and encasement for clarification in the accommodation rules. The rules also amend the definitions of "public utility" and "utility product" to incorporate broadband service and repeal the definitions of "idled facility" and "ramp terminus" because those terms are not used in the subchapter.

Amendments to §21.37, Design, address the requirements of a utility in the design phase of any installation of a utility facility within state right of way. The amendments list additional federal and state regulations and policies that were previously required but not specified in the rule. The amendments also incorporate certain design criteria for utility installations in and around

common highway facility features for clarification and safety enhancement purposes.

Amendments to §21.38, Construction and Maintenance, address department requirements for the installation, operation, and maintenance of utility facilities within state right of way. These amendments bring the rules into conformance with the department's current operational requirements for utilities to ensure the accommodation process is safe and efficient. The amendments change the section heading to include inspection in the heading.

Amendments to §21.40, Underground Utilities, address department requirements for underground utilities. Specifically, the amendments call out the requirements for encasing underground utility lines to protect the utility and highway facility. The amendments also provide the minimum depths and installation methods that the department requires for various utility facility types. The installation methods additionally require the use of joint duct banks for underground communication lines. These changes are made to align the rules with current department operations.

Amendments to §21.41, Overhead Electric and Communication Lines, address department requirements for overhead electric and communication lines. Specifically, the amendments specify the requirements for utility pole sizes and vertical clearances and the requirement that only one set of pole lines for all utilities will be allowed to be installed within a particular segment of state right of way unless the department deems the requirement impractical.

Chapter 21, Subchapter P, Utility Relocation Prepayment Funding Agreements (§§21.921 - 21.930), is repealed. That subchapter implemented a utility relocation prepayment funding program under Transportation Code, §203.0922. Section 203.0922 expired in 2013 and is no longer available for use.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Kyle Madsen, Right of Way Division Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Mr. Madsen has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will benefit the public by streamlining the utility installation process within state right of way, which will enable utility providers to deliver utility products in an efficient and safe manner.

COSTS ON REGULATED PERSONS

Mr. Madsen has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Madsen has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Mr. Madsen has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§21.31, 21.37, 21.38, 21.40, and 21.41 and the repeal of §§21.921 - 21.930 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "utility accommodation within state right-of-way." The deadline for receipt of comments is 5:00 p.m. on May 16, 2022. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §§21.31, 21.37, 21.38, 21.40, 21.41

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §250.002, which requires the commission to adopt rules to establish an accom-

modation process authorizing broadband-only providers to use state highway rights-of-way.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §250.002.

§21.31. Definitions.

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

(1) AASHTO--American Association of State Highway and Transportation Officials.

(2) Abandoned utility--A utility facility that no longer carries a product or performs a function and for which the owner:

(A) does not plan to use in future operations; or

(B) is unknown or cannot be located.

(3) Access denial line--A line concurrent with the common property line across which access to the highway facility from the adjoining property is not permitted.

(4) As-Built plans--Drawings showing the actual locations of installed or relocated utility facilities.

(5) ASCE--American Society of Civil Engineers.

(6) [~~(5)~~] Border width--The area between the edge of pavement structure or back of curb to the right of way line.

(7) [~~(6)~~] Bridge abutment joint--The joint between the approach slab and bridge structure.

(8) Broadband service--Internet service with the capability of providing:

(A) a download speed of 25 megabits per second or faster; and

(B) an upload speed of three megabits per second or faster.

(9) [~~(7)~~] Center median--The area between opposite directions of travel on a divided highway.

(10) [~~(8)~~] Certified as-installed construction plans--The construction plans for the installation of a utility facility, accompanied by an affidavit certifying that the facility was installed in accordance with the plans.

(11) [~~(9)~~] Commission--The Texas Transportation Commission.

(12) [~~(10)~~] Common carrier--As defined in the Natural Resources Code, §111.002.

(13) Communication line--Any conductive wire or cable that uses electrical or light signals for the transmission of information.

(14) [~~(11)~~] Conduit--A pipe or other opening, buried or above ground, for conveying fluids or gases, or serving as an envelope containing pipelines, cables, or other utility facilities.

(15) [~~(12)~~] Controlled access highway--A highway so designated by the commission on which owners or occupants of abutting lands and other persons are denied access to or from the highway mainlanes.

(16) [~~(13)~~] Department--The Texas Department of Transportation.

(17) [~~(14)~~] Depth of cover--The minimum depth as measured from the top of the utility line to the ground line or top of pavement.

(18) [~~(15)~~] Design vehicle load (HS-20)--A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by AASHTO for use in the structural design and analysis of bridges.

(19) [~~(16)~~] Director--The chief administrative officer in charge of either the Maintenance Division or the Right of Way Division, or a successor division of either the Maintenance Division or the Right of Way Division.

(20) [~~(17)~~] Distribution line--That part of a utility system connecting a transmission line to a service line.

(21) [~~(18)~~] District--One of the 25 geographical districts into which the department is divided.

(22) [~~(19)~~] District engineer--The chief administrative officer in charge of a district, or his or her designee.

(23) [~~(20)~~] Duct--A pipe or other opening, buried or above ground, containing multiple conduits.

(24) Encasement--A pipe or other structure that is separate from and surrounds a utility facility and that:

(A) supports the pavement structure and superimposed loads on the pavement, including construction machinery, and protects the pavement structure if the carrier pipe fails;

(B) protects utility facility against accidental damage from excavation equipment; and

(C) allows the repair or replacement of the utility facility without disturbing the pavement structure.

(25) [~~(21)~~] Engineer--A person licensed to practice engineering in the state of Texas.

(26) [~~(22)~~] Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the state highway system.

(27) [~~(23)~~] Executive director--The chief administrative officer of the department, or that officer's designee not below the level of assistant executive director.

(28) [~~(24)~~] Freeway--A divided highway with frontage roads or full control of access.

(29) [~~(25)~~] Frontage road--A street or road auxiliary to, and located alongside, a controlled access highway or freeway that separates local traffic from high-speed through traffic and provides service to abutting property.

(30) [~~(26)~~] Gathering line--A line that delivers a raw utility product from various sites to a central distribution or feed line for the purposes of refining, collecting, or storing the product.

(31) [~~(27)~~] Hazardous material--Any gas, material, substance, or waste that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local authority to pose a present or potential hazard to human health or safety or to the environment. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table

(49 CFR §172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173 (49 CFR §171.8).

(32) [~~(28)~~] High-pressure pipeline--A pipeline that is operated, or may reasonably be expected to operate in the future, at a pressure of over 60 pounds per square inch.

(33) [~~(29)~~] Horizontal clearance--The areas of highway roadsides designed, constructed, and maintained to increase safety, improve traffic operation, and enhance the appearance of highways.

~~[(30) Idled facility--A utility conduit or line which temporarily does not carry a product, or does not perform a function and whose owner has not provided a date for its return to operation.]~~

(34) [~~(31)~~] Inclement weather--Weather conditions that are hazardous to the safety of the traveling public, highway or utility workers, or the preservation of the highway.

(35) [~~(32)~~] Joint use agreement--A use and occupancy agreement that describes the obligations, responsibilities, rights, and privileges vested in the department and retained by the utility, and used for situations in which the utility has a compensable interest in the land occupied by its facilities and the land is to be jointly occupied and used for highway and utility purposes.

(36) [~~(33)~~] Low-pressure pipeline--A pipeline that is operated at a pressure not exceeding 60 pounds per square inch.

(37) [~~(34)~~] Mainlanes--The traveled way of a freeway or controlled access highway that carries through traffic.

(38) [~~(35)~~] Maintenance Division--The administrative office of the department responsible for the maintenance and operation of the state highway system.

(39) [~~(36)~~] Noncontrolled access highway--A highway on which owners or occupants of abutting lands or other persons have direct access to or from the mainlanes by department permit.

(40) [~~(37)~~] Outer separation--The area between the mainlanes of a highway for through traffic and a frontage road.

(41) [~~(38)~~] Pavement structure--The combination of the surface, base course, and subbase.

(42) [~~(39)~~] Private utility--A person, firm, corporation, or other entity engaged in a utility business other than a public utility or saltwater pipeline operator. The term includes an individual who owns a service line.

(43) [~~(40)~~] Public utility--A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of transporting or distributing a utility product that directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways. The term includes a common carrier and a gas corporation. The term also includes providers of broadband service. This term does not include a saltwater pipeline operator whose only right to occupy state right of way is by a lease under Natural Resources Code, §91.902.

~~[(41) Ramp terminus--The entrance or exit portion of a controlled access highway ramp adjacent to the through traveled lanes.]~~

(44) [~~(42)~~] Right of Way Division (ROW)--The administrative office of the department responsible for the acquisition and management of the state right of way.

(45) [~~(43)~~] Riprap--An appurtenance placed on the exposed surfaces of soils to prevent erosion, including a cast-in-place layer of concrete or stones placed together.

(46) [~~(44)~~] Saltwater--Water that contains salt and other substances and that is intended to be used in the exploration for oil or gas or that is produced during the drilling or operation of an oil, gas, or other type of well.

(47) [~~(45)~~] Saltwater pipeline--A pipeline that carries saltwater. The term includes a pipeline that carries water and water based solutions from an oil or gas well on which hydraulic fracturing treatment has been performed to a waste disposal well.

(48) [~~(46)~~] Saltwater pipeline operator--A person, firm, corporation or other entity that owns, installs, manages, operates, leases, or controls a saltwater pipeline that is not a public utility.

(49) [~~(47)~~] Service line--A utility facility that conveys electricity, gas, water, or telecommunication services from a main or conduit located in the right of way to a meter or other measuring device that services a customer or to the outside wall of a structure, whichever is applicable and nearer the right of way.

(50) [~~(48)~~] Temporary Saltwater Pipeline--An aboveground saltwater pipeline that satisfies the requirements of §21.57 of this subchapter.

(51) [~~(49)~~] TMUTCD--The most recent edition of Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(52) [~~(50)~~] Traffic impact analysis--A traffic engineering study that determines the potential current and future traffic impacts of a proposed traffic generator and that is signed, sealed, and dated by an engineer licensed to practice in the state of Texas.

(53) [~~(51)~~] Transmission line--That part of a utility system connecting a main energy or material source with a distribution system.

(54) [~~(52)~~] Use and occupancy agreement--The written document, whether in the form of an agreement, acknowledgment, notice, or request, by which the department approves the use and occupancy of highway right of way by utility facilities.

(55) [~~(53)~~] Utility--Any entity owning a utility facility.

(56) [~~(54)~~] Utility appurtenances--Any attachments or integral parts of a utility facility, including fire hydrants, valves, communication controller boxes and pedestals, electric boxes, and gas regulators.

(57) [~~(55)~~] Utility facilities--All utility lines, pipelines, saltwater pipelines, conduits, cables, and their appurtenances within the highway right of way except those for highway-oriented needs, including underground, surface, or overhead facilities either singularly or in combination, which may be transmission, distribution, service, or gathering lines.

(58) [~~(56)~~] Utility product--The product, such as water, saltwater, steam, electricity, gas, oil, [~~or~~] crude resources, [~~or~~] communications, cable television, or waste disposal services, or broadband service, carried by the utility facility.

(59) [~~(57)~~] Utility strip--The area of land established within a control of access highway, located longitudinally within the area between the outer traveled way and the right of way line, for the nonexclusive use, occupancy, and access by one or more authorized utilities.

(60) [~~(58)~~] Utility structure--A pole, bridge, tower, or other aboveground structure on which a conduit, line, pipeline, or other utility facility is attached.

§21.37. Design.

(a) General. Utility facility design shall [~~will~~] be accomplished in a manner and to a standard acceptable to the department. The location and manner in which a utility facility installation, adjustment, or relocation work will be performed within the right of way must be reviewed and approved by the department. Measures shall [~~must~~] be taken to preserve the safety and free flow of traffic, structural integrity of the highway or highway structure, ease of highway maintenance, appearance of the highway, and the integrity of the utility facility. Utility facility installations shall conform with:

(1) the requirements of this subchapter;

(2) the National Electrical Safety Code rules for the installation and maintenance of electric supply and communication lines;

(3) 23 CFR Part 645 [~~645B~~], [~~Accommodation of~~] Utilities;

(4) 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards;

(5) 49 CFR Part 194, Response Plans for Onshore Pipelines;

(6) [~~(5)~~] 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline;

(7) 49 CFR Part 196, Protection of Underground Pipelines from Excavation Activity;

(8) [~~(6)~~] the latest American Society for Testing and Materials (ASTM) specifications;

(9) [~~(7)~~] the latest edition of the Texas Manual on Uniform Traffic Control Devices;

(10) 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems;

(11) [~~(8)~~] 30 TAC §§290.38 - 290.47 (relating to Rules and Regulations for Public Water Systems);

(12) [~~(9)~~] applicable state and federal environmental regulations, including storm water pollution prevention, endangered species, and wetlands; [~~and~~]

(13) [~~(10)~~] applicable Railroad Commission of Texas and Texas Commission on Environmental Quality safety regulations;[~~.~~]

(14) applicable department Traffic Control Standards;

(15) department Standard Specifications for Construction, Maintenance of Highway Streets and Bridges;

(16) ASCE Guideline 38-02, Standard Guidelines for the Collection and Depiction of Existing Subsurface Utility Data; and

(17) Broadband Accommodation Process, found in the TxDOT Right of Way Utilities Manual, Appendix B.

(b) Location.

(1) Districts may have special provisions for utility facility installations based on constraints, needs, and practices in their areas.

(2) Utility facilities shall be located to avoid or minimize the need for adjustment for future highway projects and improvements, to allow other utilities equal access in the right of way, and to permit access to utility facilities for their maintenance with minimum interference to highway traffic.

(3) [~~(2)~~] Longitudinal installations, if allowed, shall be located on uniform alignments to the right of way line to provide space for future highway construction and possible future utility facility installations.

(4) [~~(3)~~] New utility facilities crossing the highway shall be installed at approximately 90 degrees to the centerline of the highway.

(5) [~~(4)~~] The horizontal and vertical location of overhead utility facilities must [~~shall~~] conform with §21.41 of this subchapter (relating to Overhead Electric and Communication Lines), consistent with the clearances applicable to all roadside obstacles. No aboveground fixed objects will be allowed in the horizontal clearance. Underground utility facilities must conform to §21.40 of this subchapter (relating to Underground Utilities).

(6) [~~(5)~~] Every effort shall [~~must~~] be made to ensure [~~insure~~] that the proposed installation is compatible with existing and approved future utility facilities.

(7) [~~(6)~~] A utility facility on controlled access highways or freeways shall be located to permit maintenance of the facility by access from frontage roads, nearby or adjacent roads and streets, or trails along or near the right of way line without access from the mainlanes or ramps. A utility facility may not be located longitudinally in the center median or outer separation of controlled access highways or freeways.

(8) [~~(7)~~] On highways with frontage roads, longitudinal utility facility installations may be located between the frontage road and the right of way line. Utility facilities may [~~shall~~] not be placed or allowed to remain in the center median, outer separation, or beneath any pavement, including shoulders.

(9) If a utility facility extends across a railroad's right of way, the utility, before it may install the utility facility within the department's right-of-way, must provide to the department a copy of the permit that was executed by the railroad and that authorizes the utility to install the utility facility within the railroad's right of way.

(10) [~~(8)~~] The procedures and requirements of this paragraph apply if a longitudinal installation is proposed within existing access denial lines of a controlled access highway or freeway without frontage roads.

(A) The public utility or saltwater pipeline operator seeking the installation shall submit to the district engineer a written request that includes for each facility proposed for installation the following detailed information:

(i) the information required by §21.35 of this subchapter (relating to Exceptions);

(ii) survey data as directed by the department to identify and designate the location of a utility strip, the utility strip's relationship to existing highway facilities and the right of way line, and the specific area of use, occupancy, and access for installation and maintenance of the utility facility;

(iii) a plan for the utility's access to, from, and within the utility strip with clearly described procedures that preserve the safety and free flow of traffic on the controlled access highway or freeway during installation, maintenance, and emergency service or repair of the utility facility; and

(iv) any additional information, including an engineering study requested by the department, that is reasonably necessary for a determination of the impact of the proposed utility facility on the safety, design, construction, operation, maintenance, and stability of the controlled access highway.

(B) If the requested utility facility installation meets the conditions of §21.35 of this subchapter and the other applicable require-

ments of this subchapter, the department will [~~shall~~] establish a utility strip along the outer edge of the right of way by:

(i) locating a utility-access denial line between the proposed utility facility installation and the mainlanes and connecting ramps; and

(ii) designating the specific area of use, occupancy, and access for installation and maintenance of the requested utility facility.

(C) The department may adjust the utility-access denial line of an established utility strip to accommodate additional authorized utility facilities within the utility strip.

(D) The utility requesting installation of the utility facility is responsible for all costs associated with providing the information required for designation of a new or expanded utility strip. The utility shall delineate the utility-access denial line on the ground by setting readily identifiable, durable, and weatherproof permanent markers to represent or reference the corners, angle points, and points of curvature or tangency of the utility-access denial line.

(E) All existing and proposed fences shall be located at the freeway right of way line.

(F) Denial of access regarding property adjoining the right of way line will not be altered.

(c) Plans. The plans must [~~shall~~] protect the public investment in the highway, inclusive of all its components, and maintain traffic capacity and safety for each highway user.

(1) All utility facility installations must [~~shall~~] be of durable materials designed for long life expectancy and relatively free from the need for routine servicing or maintenance. In addition to the requirements of this subchapter, any existing utility facilities to remain in place must be of satisfactory design and condition in the opinion of the district.

(2) Utility facility installation may [~~shall~~] not disturb existing drainage courses. In addition, soil erosion shall be held to a minimum and sediment from the construction site shall be kept away from the highway and drain inlets.

(3) Utility facility installations shall be planned to minimize hazards to, and interference with, future highway projects or other utility installations.

(4) Plans must [~~shall~~] include the design, proposed location, vertical elevations, and horizontal alignments of the utility facility based on survey data provided by a person registered by Texas as a registered professional land surveyor [~~the department's survey data~~], the relationship to existing highway facilities and the right of way line, and location of existing utility facilities that may be affected by the proposed utility facility.

(5) A utility shall verify the department's right of way line on the ground and procure any additional surveys required by the department before installing the utility facility.

(6) [~~(5)~~] As-built plans or certified as-installed construction plans must [~~shall~~] include the installed location, vertical elevations, and horizontal alignments of the utility facility based upon the department's survey data, the relationship to existing highway facilities and the right of way line, and access procedures for maintenance of the utility facility. All as-built plans must comply with ASCE guidelines and standards. As-installed construction plans certified by a utility or its representative shall be submitted to the department for each relocation or new installation. In the alternative, if approved by the director of the Maintenance Division or Right of Way Division, a district may require a utility to deliver either as-installed construction plans that are certified by an independent party or final as-built plans that are signed and sealed by an engineer or registered professional land surveyor. In determining whether to authorize a requirement for independently certified or signed and sealed plans, the director shall consider:

(A) the amount of available right of way or the proposed utility facility's proximity to department facilities and other utility facilities that may be impacted;

(B) the type of utility facility; and

(C) past performance of the utility in providing accurate location data and conformance with its certified as-installed construction plans.

(7) [~~(6)~~] If approved by the director of the Maintenance Division or the Right of Way Division, a district may require a utility to deliver plans that are signed and sealed by an engineer. In determining whether to authorize a requirement for signed and sealed plans, the director shall consider:

(A) the amount of available right of way or the proposed utility facility's proximity to department facilities or other utility facilities that may be impacted;

(B) the complexity of required traffic control plans;

(C) the type of utility facility;

(D) whether the installation or adjustment activity requires a storm water pollution prevention plan; and

(E) the utility's past performance in providing accurate location data and conformance with its construction plans.

(d) Tunnels and bridges.

(1) Fuel tanks, including storage tanks for petroleum or compressed gases, may not be within 100 feet of a highway structure.

(2) [~~Interstate highways.~~] In providing a utility tunnel or utility bridge, the requirements in subparagraphs (A) - (I) of this paragraph apply.

(A) Mutually hazardous transmittants, such as fuels and electric energy, shall be isolated by compartmentalizing or by auxiliary encasement of incompatible carriers.

(B) The utility tunnel or utility bridge structure shall conform in design, appearance, location, bury, earthwork, and markings to the culvert and bridge practices of the department.

(C) Where a pipeline on or in a utility structure is encased, the encasement [~~casing~~] shall be effectively opened or vented at each end to prevent possible build up of pressure and to detect leakage of gases or fluids.

(D) Where encasement [~~a casing~~] is not provided for a pipeline on or in a utility structure, additional protective measures shall be taken, such as employing a higher factor of safety in the design, construction, and testing of the pipeline than would be required for cased construction.

(E) Broadband service, communication, [~~Communication~~] and electric power lines shall be insulated, grounded, and carried in protective conduit or pipe from the point of exit from the ground to reentry, and the cable carried to a manhole located beyond the backwall of the structure.

(F) Carrier pipe and encasement [~~casing pipe~~] for gas, liquid petroleum, hazardous product, and water lines shall be insulated from electric power line attachments.

(G) Sectionalized block valves shall be installed in lines at or near ends of utility structures, pursuant to 49 CFR §192.179, Transmission Line Valves, unless segments of the lines can be isolated by other sectionalizing devices within a distance acceptable to the department.

(H) Any maintenance, servicing, or repair of the utility facilities is [~~lines will be~~] the responsibility of the utility.

(I) The utility shall notify the district 48 hours in advance of any maintenance, servicing, or repair; however, in an emergency situation, the utility shall notify the district as soon as practicable.

(3) [~~(2) Non-interstate highways.~~] If a utility facility exists on the utility's own easement and it would be more economical to the department to adjust the utility facility across a highway by use of a utility tunnel or bridge rather than to provide separately trenched and cased crossing, consideration should be given to provision of such a structure. Where the utility facility was placed through an approved use and occupancy agreement and the adjustment of the utility facility is the sole responsibility of the utility, the department may allow for the provision of a utility structure without cost to the department, provided the conditions outlined in subsection (a) of this section and all other pertinent requirements are met. If a structure is to serve as a joint utility/pedestrian crossing or a joint utility/sign support structure, the department will participate to the extent necessary for accommodation of pedestrians or highway signs only.

(e) Joint use of utility and highway structures.

(1) The attachment of utility facilities to bridges and grade separation structures is prohibited if other locations are feasible and reasonable.

(2) Where other arrangements for a utility facility to span an obstruction are not feasible, the utility may submit a request to the district for attachment of the utility facility to a bridge structure through a bridge attachment agreement. Each attachment will be considered on an individual basis, and permission to attach will not be considered as establishing a precedent for granting of subsequent requests for attachment.

(A) When it is impractical to carry a self-supporting communication line across a stream or other obstruction, the department may permit the attachment of the utility facility to its bridge. If approved on existing bridges, the utility facility shall [~~must~~] be enclosed in a conduit and so located on the bridge structure as not to interfere with stream flow, traffic, or routine maintenance operations. When a request is made before construction of a bridge, if approved, suitable conduits may be provided in the structure if the utility bears the cost of all additional work and materials involved.

(B) If it is the department's responsibility to provide for the adjustment of telephone lines or telephone conduits to accommodate the construction of a highway and the adjustment provides for the placement of telephone conduits in a bridge, the department will allow a reasonable number of spare telephone conduits in the structure if the spares are placed at the time of construction and the telephone company bears the cost of the spare conduits.

(C) A utility may [~~shall~~] not attach a utility facility to a bridge without the written approval of the executive director.

(D) Power lines carrying greater than 600 volts are prohibited [~~shall not be permitted~~] on bridges.

(E) When a utility is granted permission to attach a utility facility to a proposed bridge prior to construction, any additional costs associated with the design or construction to accommodate the utility facility are the responsibility of the utility.

(F) A utility requesting permission to attach a utility facility to an existing bridge shall submit sufficient information to allow the department to conduct a stress analysis to determine the effect of the added load on the bridge structure. The department may require other details of the proposed attachment as they affect safety and maintenance.

(G) A utility shall ensure that water and wastewater facilities attached to a bridge are not susceptible to leaks and do not damage the highway facility. The utility shall ensure that all utility facilities attached to a bridge do not adversely affect the serviceability of the bridge. As-built plans of the attached utility facility must be signed and sealed by an engineer.

(f) Aesthetics. A utility shall [~~will~~] notify the department before removing, trimming, or replacing trees, bushes, shrubbery, or any other aesthetic features. The department must approve the extent and method of removal, trimming, or replacement of trees, bushes, shrubbery, or any other aesthetic feature.

(g) Design and construction responsibility.

(1) The utility is responsible for the design of the installation, adjustment, or relocation of a utility facility.

(2) If a state highway improvement project requires the adjustment or relocation of a communication, water, or waste water facility that is 100 percent reimbursable by the department under the requirements of Transportation Code, §203.092 or the adjustment or relocation of a facility of an electric distribution provider, such as an electric service corporation, regional electric cooperative, or municipal or joint-agency electric service provider, that is 100 percent reimbursable by the department under the requirements of Transportation Code, §203.092, the utility by agreement with the executive director may authorize the department to procure the design of an adjustment or relocation and include the resulting plan in the construction contract for the adjustment or relocation.

(3) Under the agreement the department may use only an engineering consultant approved by the utility. An employee of the department may not be used to provide engineering services under the agreement.

(4) The utility must approve the resulting plan for the adjustment or relocation before it may be included in the construction contract. The utility is responsible for ensuring that the design and construction meet all regulatory and environmental compliance requirements.

(5) The agreement must provide for:

(A) concurrent construction inspection by the utility during construction; and

(B) final acceptance by the utility of the design and construction after the construction is completed.

(6) During the relocation or adjustment construction work under the agreement, the utility remains liable under any certificate of service. The department is not responsible for any issue related to the design or construction of the adjustment or relocation of the utility facility after final acceptance by the utility of the adjustment or relocation.

(7) After the completion of the construction work under the agreement, the utility is responsible for any ongoing maintenance, including compliance with §21.38 of this subchapter (relating to Construction and Maintenance).

(8) The department will reimburse the utility for eligible expenses incurred in approving and inspecting the design documents.

(9) All provisions of this subchapter and Subchapter B of this chapter (relating to Utility Adjustment, Relocation, or Removal) that apply to the design, estimates, and scope of an adjustment or relocation apply to a project carried out under an agreement entered into under this subsection.

§21.38. Construction, [~~and~~] Maintenance, and Inspection.

(a) General.

(1) A utility is responsible for the construction and maintenance of its utility facility, including installation, adjustment or relocation, replacement, expansion, and repair. Construction and maintenance must conform to the requirements of §21.37 of this subchapter (relating to Design) and shall be accomplished in a manner and to a standard acceptable to the department.

(2) The provisions of this section apply to all utility facility types, unless otherwise specified in §21.40 and §21.41 of this subchapter (relating to Underground Utilities and Overhead Electric and Communication Lines, respectively) and the department's Broadband Accommodation Process.

(3) Utilities with utility facilities on the right of way shall [~~be responsible and accountable to~~] preserve and protect the safety of the traveling public and the public's investment in the highway facility.

(4) When an existing approved utility facility requires construction or maintenance, the utility shall notify the district 48 hours before the start of any work. In an emergency situation, the utility shall notify the district as soon as possible.

(5) The utility may [~~shall~~] not cut into the pavement or concrete riprap without written permission from the department.

(6) Utilities shall reimburse the department for the cost of measures taken by the department in the interest of public safety, restoration, clean-up, and repairs to the highway and right of way made necessary by the utility's failure to comply with the provisions of this subchapter.

(b) Vegetation and site clean-up.

(1) When utility construction or maintenance is complete, the utility shall restore the right of way to substantially the same or better condition than [~~that~~] existed before the construction or maintenance, including reseeding or resodding to prevent erosion. After the area is brought to grade, the entire disturbed area shall be covered in accordance with the department's Standard Specifications for Construction and Maintenance of Highways Streets & Bridges.

(2) To preserve and protect trees, bushes, and other aesthetic features on the right of way, the department may specify the extent and methods of tree, bush, shrubbery, or any other aesthetic feature's removal, trimming, or replacement, in conjunction with paragraph (1) of this subsection. The district engineer shall use due consideration in establishing the value of trees and other aesthetic features in the proximity of a proposed utility facility and any special district requirements justified by the value of the trees and other aesthetic features.

(3) If settlement or erosion occurs due to the actions of the utility, the utility shall, at its expense, reshape, reseed, or resod the area as directed by the department. Reseeding, resodding, or repair under this section shall be completed within a reasonable period of time that is acceptable to the department, not to exceed 12 months after the day that the utility construction or maintenance was completed.

(4) Pruning of trees shall comply with the department's Roadside Vegetation Management Manual. When unapproved pruning or cutting occurs, the utility is [~~shall be~~] responsible for the replacement of trees or for damages to existing trees and bushes.

(5) Highways adjacent to utility construction sites shall be kept free from debris, construction material, and mud. At the end of every construction day, construction equipment and materials shall be removed from the horizontal clearance, placed as far from the pavement edge as possible, and properly protected.

(6) The utility shall reimburse the department for all costs incurred to repair damage to the right of way that results from the actions of the utility. These costs may include restoration of and repairs to the pavement structure, drainage structures, terrain, landscaping, or fences.

(7) The utility is responsible for any damages it causes to property adjacent to the department's right of way. The damages may include the cost of restoration of the property.

(c) Traffic control.

(1) The utility is [~~shall be~~] responsible for the safety of, and shall minimize disruption to, the traveling public with proper traffic control.

(2) The utility shall erect at each end of the utility's installation an informational sign, as shown in Figure §21.38(c)(2) for all work associated with a utility facility on the department's right of way. Figure: 43 TAC §21.38(c)(2)

(3) [~~(2)~~] Appropriate measures shall be taken in the interests of safety, traffic convenience, and access to adjacent property that meet the requirements of the department's Compliant Work Zone Traffic Control Device List. The utility shall place appropriate signs, markings, and barricades before beginning work and shall maintain them to warn motorists and pedestrians properly. All traffic control devices must [~~shall~~] conform to the TMUTCD, [~~and~~] the National Cooperative Highway Research Project Report 350, and the AASHTO Manual for Assessing Safety Hardware.

(4) [~~(3)~~] All utility pits opened within the horizontal clearance shall [~~must~~], in compliance with National Cooperative Highway Research Project Report 350, be properly protected with concrete traffic barriers, metal beam guard fencing, appropriate end treatments, or other appropriate warning devices.

(d) Work restrictions.

(1) The department reserves the right to halt construction or maintenance during hazardous situations, such as inclement weather, peak traffic hours, special events, or holidays, or for non-compliance with a use and occupancy agreement. Requests for emergency maintenance must [~~shall~~] be directed to the appropriate district office.

(2) If the department determines that the facility was not constructed or maintained in the location or in the manner shown on the approved construction plans, the department may require the utility to take appropriate corrective action as determined by the department.

(e) Utility work included in a highway construction contract.

(1) If a state highway improvement project requires the adjustment or relocation of a utility facility, the utility by agreement with the department may authorize the department to include the adjustment or relocation of the utility facility in the highway construction contract. The department may enter into an agreement under this subsection only if the district engineer determines that:

(A) including the adjustment or relocation of the utility facility in the construction contract is necessary to meet the construc-

tion sequencing of the state highway improvement project or will expedite the project;

(B) the adjustment or relocation of the utility facility by the department's contractor can be accomplished in conformity with all applicable local, state, and federal regulations for the installation of the particular utility facility; and

(C) the adjustment or relocation of the utility facility by the department's contractor will not involve an unreasonably high risk of:

(i) danger to the traveling public, highway, or construction workers due to the presence of hazardous materials, high pressure pipelines, or other potentially dangerous utility products; or

(ii) prolonged interruption of the delivery of a utility product that is essential to public health and safety.

(2) The utility must approve the plans, specifications, and cost estimate for the adjustment or relocation of the utility facility before it may be included in the construction contract. The utility is responsible for ensuring that the design and construction of the utility facility meet all regulatory and environmental compliance requirements.

(3) If the adjustment or relocation of the utility facility included in the construction contract is not 100 percent reimbursable by the department under the requirements of Transportation Code, §203.092, the utility is responsible for advancing or otherwise paying to the department the utility's prorata share under state law of the funds necessary for construction work related to the adjustment or relocation.

(4) An agreement under this subsection must provide:

(A) the estimated cost of the construction work related to the adjustment or relocation, including the cost of any betterment, to be performed by the department's contractor, and the utility's prorata share of the cost based on eligibility for department cost participation under Transportation Code, §203.092;

(B) for payment to the department of the utility's prorata share, if any, of the estimated cost under subparagraph (A) of this paragraph at least 45 days before the date set for the receipt and opening of bids for the highway construction contract;

(C) a description of the construction work related to the adjustment or relocation, including any betterment, that is to be performed by the utility at no cost to the department;

(D) for concurrent construction inspection by the utility during construction;

(E) that the utility is responsible for physically connecting the installed utility facility to its existing utility facilities to make the installed facility operational and for performing any tests required to assure compliance with all applicable safety standards and regulations;

(F) for final acceptance by the utility of the adjustment or relocation after the construction work is completed; and

(G) any other provisions that the district engineer considers to be necessary or desirable.

(5) When used in this subsection, "betterment" means any upgrading of the utility facility being adjusted or relocated that is not attributable to the highway construction project nor required in order to comply with any other law, code, or ordinance, and is made solely for the benefit and at the election of the utility.

(6) During the adjustment or relocation of a utility facility under an agreement under this subsection, the utility remains liable under any certificate of service. The department is not responsible for any issue related to the design or construction of the adjustment or relocation of the utility facility after final acceptance by the utility of the utility facility.

(7) After completion of the construction work under an agreement under this subsection, the utility is responsible for any ongoing maintenance of the utility facility in compliance with this section.

(8) If the adjustment or relocation of the utility facility is reimbursable by the department under the requirements of Transportation Code, §203.092, the department will reimburse the utility for eligible expenses incurred in approving and inspecting the construction work.

(9) All provisions of this subchapter and Subchapter B of this chapter (relating to Utility Adjustment, Relocation, or Removal) that apply to the design, estimates, and scope of an adjustment or relocation apply to a project carried out under an agreement entered into under this subsection.

§21.40. Underground Utilities.

(a) General.

(1) Encasement.
Figure: 43 TAC §21.40(a)(1)

(A) Underground utility facilities crossing the highway shall be encased as shown in Figure §21.40(a)(1) [~~in the interest of safety, protection of the utility, protection of the highway, and for access to the utility facility~~]. The encasement must be a single structure with no open seams. If used, polyvinyl chloride (PVC) pipe shall be glued with an appropriate adhesive, high-density polyethylene (HDPE) pipe shall be bonded, and steel pipe shall be welded or bolted. [~~Casing shall consist of a pipe or other separate structure around and outside the carrier line. The utility must demonstrate that the casing will be adequate for the expected loads and stresses.~~]

(B) The encasement may be of metallic or non-metallic material, depending on the type of utility facility. If the encasement is not schedule 40 polyvinyl chloride (PVC) pipe, high-density polyethylene (HDPE), or made of steel, the utility must demonstrate that the encasement is adequate for the expected loads and stresses. [~~Casing pipe shall be steel, concrete, or plastic pipe as approved by the district, except that if horizontal directional drilling is used to place the casing, high-density polyethylene (HDPE) pipe must be used in place of plastic pipe.~~]

(C) [~~Encasement may be of metallic or non-metallic material. Encasement material shall be designed to support the load of the highway and superimposed loads thereon, including that of construction machinery. The strength of the encasement material shall equal or exceed structural requirements for drainage culverts and it shall be composed of material of satisfactory durability for conditions to which it may be subjected.~~] The length of any encasement [~~under the roadway~~] shall extend, as applicable, to within five feet of the right of way, two feet of a connecting longitudinal line, or [~~be provided from top of backslope to top of backslope for cut sections, five feet beyond the toe of slope for fill sections, and~~] five feet beyond the face of the curb, whichever is greatest [~~for curb sections~~]. These lengths of encasement include areas under center medians and outer separations[~~, unless otherwise specifically addressed in subsections (b) - (f) of this section~~]. At a district's discretion, the district may waive the encasement requirement under center medians or under outer separations that are more than 76 feet wide. At a district's

discretion and after considering traffic volume, condition of highway, maintenance responsibility, and district practice, the district may waive the encasement requirement under side road entrances.

(D) Unless waived by the district, an encasement is required for installation under other department structures, such as retaining walls, headwalls, and sound walls. [~~The department will provide an example graphic upon request of a typical section showing encasement lengths.~~]

(2) Depth.

(A) Underground utility facilities shall be installed at the applicable minimum depth of cover shown in Figure §21.40(a)(2)(A) unless the district requires or authorizes a different depth under this paragraph.
Figure: 43 TAC §21.40(a)(2)(A)

(B) The district may require a greater depth at specific areas due to site conditions including areas such as culvert crossings, drainage areas, and future project considerations.

(C) The district may require a greater depth based on distance from edge of pavement.

(D) Where placements at the depths in this section are impractical or where unusual conditions exist, the department may allow installations at a lesser depth, but will require other means of protection, including encasement or the placement of a reinforced concrete slab. Reinforced concrete slabs or caps shall meet the following standards:

(i) [~~(A)~~] width--five feet, or three times the diameter of the pipe, whichever is greater;

(ii) [~~(B)~~] thickness--a[~~six inches, at~~] minimum of six inches;

(iii) [~~(C)~~] reinforcement--#4 bars at 12 inch centers each way or equivalent reinforcement; and

(iv) [~~(D)~~] cover--no less than six inches of sand or equivalent cushion between the bottom of the slab/cap and the top of the pipe.

(3) Manholes.

(A) Manholes may [~~shall~~] not be installed unless necessary for installation and maintenance of underground lines. In no case shall a manhole be placed or permitted to remain in the pavement or shoulder of a highway. However, on noncontrolled access highways in urban areas, the district may, in its discretion, allow existing lines to remain in place under existing or proposed highways. In these cases, manholes may remain in place or be installed under traffic lanes of low volume highways in municipalities only if measures are taken to minimize the installations and to avoid locating them at intersections or in wheel paths.

(B) To conserve space, a manhole's dimensions must [~~shall~~] be the minimum acceptable by appropriate engineering and safety standards. The only equipment that may be installed in manholes located on the right of way is equipment that is essential to the normal flow of the utility facility, such as circuit reclosers, cable splices, relays, valves, and regulators. Other equipment, such as substation equipment, large transformers, and pumps, shall be located outside the right of way.

(C) Inline manholes are the only type permitted within the right of way. The width dimensions may not [~~shall~~] be [~~no~~] larger than necessary to hold equipment involved and to meet safety standards for maintenance personnel. Outside width, the dimension of the manhole perpendicular to the highway, may [~~shall~~] not exceed ten feet, with the length to be held to a reasonable minimum. The outside diameter of the manhole chimney at the ground level may [~~shall~~] not exceed 36 inches, except that if the utility demonstrates necessity, the district may, at its discretion, allow an outside diameter of up to 52 [~~50~~] inches. The top of the roof of the manhole must [~~shall~~] be five feet or more below ground level.

(D) All manhole covers shall be installed flush with the ground or pavement structure. In order to minimize vandalism, manhole covers must weigh at least 175 pounds. Manhole rings and covers must be designed for HS-20 loading.

(E) Manholes shall be straight, inline installations with a minimum overall width necessary to operate and maintain the enclosed equipment. The utility is responsible for any adjustment of the manhole rim that may be needed to meet grade changes.

(4) Installation.

(A) A department permit is required for all installation and maintenance of utility facilities performed in the department's right of way.

(B) If the installation of the utility facility deviates from the approved location, the district, at its sole discretion, may require the adjustment of the utility facility to the approved location.

(C) [~~(A)~~] Utility facilities placed beneath any existing highway shall be installed by boring or tunneling. Jacking may not be used unless approved in writing by the district. [~~The district may require encasement of lines installed by boring or jacking.~~] The use of explosives is prohibited. Pipe bursting or fluid/mist jetting may not be used unless approved in writing by [~~allowed at the discretion of~~] the department. Longitudinal installation of a utility facility across driveways and intersecting roadways shall be bored. Open trench construction through intersecting roadways and driveways may not be used unless approved in writing by the district engineer.

(D) To preserve and protect trees, shrubbery, and other aesthetic features within the department's right of way, the district may specify the extent and methods of tree removal, tree trimming, or the replacement of the aesthetic features. Landscape areas in the department's right of way that are associated with residences shall be bored. Steep slopes that cannot be accessed without damage to the vegetation shall be bored.

(E) [~~(B)~~] For rural, uncurbed highway crossings, all borings shall extend beneath all travel lanes. Unless precluded by right of way limitations, the following clearances are required for rural highway crossings:

(i) 30 feet from all freeway mainlanes and other high-speed (exceeding 40 mph) highways except as indicated in clauses (ii) - (iv) of this subparagraph;

(ii) 16 feet for high-speed highways with current average daily traffic volumes of 750 vehicles per day or fewer;

(iii) 16 feet for ramps; or

(iv) ten feet for low-speed (40 mph or less) highways.

(F) [~~(C)~~] The reamed bore size may not exceed 40 percent of the outside diameter of the encasement, and a reamer that allows the natural wet grout to remain shall be used. Alternately, annular[~~Annular~~] voids greater than one inch between the bore hole and the carrier line [~~(~~]or encasement [~~casing~~], if used,[~~)~~] shall be filled with a slurry grout or other flowable fill acceptable to the department to pre-

vent settlement of [~~any part of~~] the highway facility [~~over the line or casing~~].

(G) [~~(D)~~] For curbed highway crossings, all borings shall extend beneath travel and parking lanes and [~~extend~~] beyond the back of curb and sidewalk, plus:

(i) 30 feet from facilities with speed limits of 40 mph or greater; or

(ii) five feet from highway facilities with speed limits of less than 40 mph or less[~~, plus any additional width necessary to clear an existing sidewalk~~].

(H) [~~(E)~~] Where circumstances necessitate the excavation of a bore pit or the presence of directional boring equipment closer than 30 feet from [~~to~~] the edge of pavement [~~than set forth in paragraphs (2) or (3) of this subsection~~], approved protective devices shall be installed for protection of the traveling public in accordance with §21.38 of this subchapter (relating to Construction and Maintenance). Bore pits shall be located and constructed in such a manner as not to interfere with the highway structure or traffic operations. Shoring [~~If necessary, shoring~~] shall be utilized for the protection of the highway facility, and its use and design must be approved by the district.

(I) [~~(F)~~] All traffic control devices, including signs, markings, or barricades used to warn motorists and pedestrians of the construction activity must conform to the TMUTCD.

(J) [~~(G)~~] When trenching longitudinally, backfill or stabilized sand shall be compacted to densities equal to that of the surrounding soil. Compaction must meet all requirements listed in Item 400, relating to excavation and backfill structures, of the department's publication, *Standard Specification for Construction and Maintenance of Highways, Streets, and Bridges.*

(K) Longitudinal installations shall be in uniform alignment with the department's right of way and as near as practical to the edge of the department's right of way line. Consideration shall be given to allow safe clearance from adjacent installations.

(L) An additional 12 inches of depth are required for installations within 50 feet of waterways, ditches, channels, creeks, or culverts.

(M) As assigned corridors within the department's right of way are finite at particular depths, the district may require the placement of a utility facility below other facilities at necessary clearances. The district may require encasements to allow the repair or replacement of the utility facility without disturbing adjacent utility facilities.

(5) Nonmetallic pipe detection. Where nonmetallic pipe is installed, whether longitudinally or at a crossing, a durable metal wire or other district-approved means of detection shall be concurrently installed.

(6) Unsuitable conditions. The following conditions are generally unsuitable or undesirable for pipeline crossings and shall be avoided:

(A) deep cuts;

(B) locations near footings or bridges and retaining walls;

(C) crossing intersections at-grade or ramp terminals;

(D) locations at cross-drains where the flow of water may be obstructed;

(E) locations within basins or underpasses drained by pump if the pipeline carries a liquid or liquefied gas; or

(F) terrain where minimum depth of cover would be difficult to attain.

(7) Clearances. Except as specified in this subchapter, there shall be a minimum of 12 inches vertical and horizontal clearance between a new utility facility and an existing utility facility, unless a greater clearance is required by the district. However, if an installation of another utility facility or highway feature cannot take place without disturbing an existing utility facility, the minimum clearance is [~~will be~~] 24 inches.

[~~(8) Crossings. A district may require crossings with no longitudinal connections to be encased within the right of way.~~]

(8) [~~(9)~~] Drainage easements. Where it is necessary for pipelines to cross department drainage easements outside of the right of way, the depth of cover shall be as specified for each type of utility facility. In cases where soil conditions are such that erosion might occur, or where it is not feasible to obtain specified depth, it shall be the responsibility of the utility to install retards, energy dissipators, encasement, or concrete or equivalent slabs/caps over the pipe, as approved by the department. Where grades on the pipelines must be maintained, such as gravity flow sewer lines, each case will be reviewed on an individual basis. The [~~, keeping in mind that the~~] main purpose of the department's drainage easement [~~channel~~] is to carry drainage water and the drainage may [~~that this flow must~~] not be obstructed. The utility is responsible for obtaining any other approvals or rights required to occupy the drainage easement.

(9) [~~(10)~~] Existing installations in a highway or transportation project. At the district's discretion, existing longitudinal utility facilities in a highway or transportation project that otherwise meet the requirements of this subchapter may remain in place if the utility facilities:

(A) can be maintained in accordance with §21.37(b)(2) of this subchapter (relating to Design); and

(B) are not located under the pavement structure or shoulder of any proposed or existing highway.

(10) [~~(11)~~] Markers. If a high pressure pipeline crosses a highway, the utility shall place a readily identifiable, durable, and weatherproof marker over the centerline of the pipe at each right of way line. Readily identifiable, durable, and weatherproof markers shall be placed at a minimum distance of 500 feet apart or line of sight at the right of way line for pipelines installed longitudinally within the right of way. All markers shall indicate the name, address, emergency telephone number of the utility, and offset from the right of way line for longitudinal placement. For gas, petroleum, or saltwater pipelines, the pipeline product, operating pressure, and depth of pipe below grade shall also be indicated on the markers. At locations where underground utility facilities have been allowed to cross at an angle other than 90 degrees to centerline, the district may require additional markers in the medians and outer separations of the highway.

[~~(12) Backfilling. Underground utility facility installations shall be backfilled with pervious material and outlets for underdrainage.~~]

[~~(13) Underdrainage. Underdrains shall be provided where necessary. No puddling beneath the highway will be permitted.~~]

(b) Gas and liquid petroleum pipelines and saltwater pipelines.

(1) Low-pressure pipelines.

(A) Depth of cover for crossings. Depth of cover is the depth to the top of the encasement, or the carrier pipe if encasement is not used [~~or casing, as applicable~~]. Where materials and other con-

ditions justify, such as on existing pipelines remaining in place, the district may require a minimum depth of cover under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater.

(i) For encased low-pressure gas pipelines, the minimum depth of cover is [~~shall be~~]:

(I) 60 [~~18~~] inches or one-half the diameter of the pipe, whichever is greater, below the lowest point of the crossed grade[~~, under pavement structure~~]; or

(II) 48 [~~24~~] inches if the pipeline is outside of the pavement structure or 60 inches [~~and~~] under ditches (original unsilted flowline)[~~; or~~]

~~*[(III)* 30 inches for unencased sections of encased pipelines outside of pavement structure].~~

(ii) For unencased low-pressure gas pipelines, the minimum depth of cover is [~~shall be~~]:

(I) 60 inches under the lowest point of the crossed grade [~~pavement surface or 18 inches under the pavement structure for paved areas~~];

(II) 48 inches if the pipeline is outside of paved areas [~~and under ditches (original unsilted flowline)~~]; or

(III) a lesser depth than applicable under subclause (I) or (II) of this clause if the lesser depth is authorized by the district where a reinforced concrete slab is used to protect the pipeline.

(B) Depth of cover for longitudinal placement. The minimum depth of cover for longitudinal installations is 48 [~~shall be 36~~] inches.

(C) Encasement. Low-pressure gas pipelines crossing the pavement shall be placed in a high-density polyethylene (HDPE) or equivalent [~~steel~~] encasement. The district may waive this encasement requirement if:

(i) the pipeline is:

(I) of welded steel construction; and

(II) is protected from corrosion by cathodic protective measures or cold tar epoxy wrapping;[~~,~~] and

(ii) the utility signs a written agreement that the pavement will not be cut for pipeline repairs at any time in the future.

(D) Vents. One or more vents shall be provided for each encasement [~~easing~~] or series of encasements [~~easings~~]. For encasements [~~easings~~] longer than 150 feet, vents shall be provided at both ends. On shorter encasements [~~easings~~], a vent shall be located at the high end with a marker placed at the low end. Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation, and may not [~~shall~~] be [~~no~~] greater than six inches in diameter. The utility's [~~owner's~~] name, address, and emergency telephone number shall be shown on each vent.

~~[(E) Plastic lines. Plastic lines shall be encased within the right of way on crossings, and must have at least 30 inches of cover.]~~

(E) [~~(F)~~] Aboveground appurtenances. Except for vents, [~~no~~] aboveground utility appurtenances for gas lines are prohibited [~~shall be permitted~~] within department's [~~the~~] right of way.

(2) High-pressure pipelines and saltwater pipelines.

(A) Depth of cover for crossings.

(i) Depth of cover is the depth to the top of the encasement or carrier pipe if an encasement is not used [~~or casing, as applicable~~]. Where materials and other conditions justify, such as on existing lines remaining in place, the district may approve a minimum depth of cover under the pavement structure of 48 [~~12~~] inches or one-half the diameter of the pipe, whichever is greater. For encased high-pressure pipeline, the minimum depth of cover is [~~shall be~~]:

(I) 60 [~~the greater of 18~~] inches or one-half the diameter of the pipe, whichever is greater, below the lowest point of the crossed grade unless a greater depth is required by the district [~~under pavement structures~~]; or

(II) 48 [~~30~~] inches if the pipeline [~~line~~] is outside of the pavement structure, or 60 inches if [~~or~~] under a ditch, below the lowest point of grade.[~~; or~~]

~~*[(III)* 36 inches for unencased sections of encased lines outside the pavement structure.]~~

(ii) Where a reinforced concrete slab is used to protect the pipeline, the district may authorize a reduction in the depths specified in this subparagraph [~~section~~].

(iii) For unencased high-pressure pipelines, the minimum depth of cover is as follows:

(I) 60 inches under the lowest point of the crossed grade, subject to subparagraph (D) of this paragraph [~~pavement surface or 18 inches under the pavement structure in paved areas~~]; or

(II) 60 [~~48~~] inches under the lowest point of grade if the pipeline [~~line~~] is placed outside the pavement structure or under a ditch.

(B) Depth of cover for longitudinal placement. The minimum depth of cover is [~~shall be~~] 48 inches.

(C) Encasement. The encasement must be [~~Casing shall consist of~~] a vented steel pipe.

(D) Unencasement.

(i) Where encasement is not employed, the utility shall show that the welded steel carrier pipe will provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures must include:

(I) heavier wall thickness, higher factor of safety in design, or both;

(II) adequate coating and wrapping;

(III) cathodic protection; and

(IV) the use of Barlow's formula regarding maximum allowable operating pressure and wall thickness, as specified in 49 CFR §192.105.

(ii) Shallow anode bed types exceeding 48 inches in width may [~~shall~~] not be used [~~permitted~~] in the department's right of way. All others must have a depth of coverage of at least 36 inches. Deep well anode beds of up to 60 inches in diameter are acceptable. Rectifier and meter loop poles shall be placed at or near the right of way line.

(iii) The minimum length of the additional protection is [~~shall be~~] the same as that required for an encased crossing.

(iv) The district may allow existing lines under low-volume highways to remain in place without encasement or extension of encasement if they are protected by a reinforced concrete slab or

equivalent protection or if they are located at a depth of five feet under the pavement structure and not less than four feet under a highway ditch.

(E) Vents. Vents shall be installed at both ends of an encasement [~~a casing~~], regardless of length, with a marker on at least one end. Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation. The utility's [~~owner's~~] name, address, and emergency telephone number shall be shown on each vent marker.

(F) Aboveground appurtenances. Aboveground appurtenances, except vents for gas lines, are prohibited [~~shall not be permitted~~] within the department's right of way.

(c) Water lines.

(1) Material type. All material types used for water lines shall conform to American Water Works [~~Waterworks~~] Association, applicable local requirements, and 30 TAC §290.44(a) (relating to Water Distribution).

(2) Depth of cover. The minimum depth of cover is 36 [~~shall be 30~~] inches from the lowest point of grade for longitudinal utility facilities, and 60[~~, but not less than 18~~] inches from the lowest point of grade [~~below the pavement structure~~] for all crossings.

(3) Encasement. Water [~~Unless another type of encasement is approved by the district, water~~] lines crossing under paved highways shall [~~must~~] be placed in an [~~a steel~~] encasement pipe within the department's [~~limits of the~~] right of way. [~~At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide. At the district's discretion, encasement under side road entrances may be omitted in consideration of traffic volume, condition of highway, maintenance responsibility, or district practice.~~] Existing water lines that are 24 inches or greater in diameter may be allowed to remain unencased under the pavement of new low volume highways, provided that the depth and all other requirements of 30 TAC §290.44 are met.

(4) Manholes. The width dimensions of manholes may not [~~shall~~] be [~~no~~] larger than is necessary to hold equipment involved and to meet safety standards for maintenance personnel. The maximum inside diameter of the manhole chimney may [~~shall~~] not exceed 48 inches. The outside diameter of the manhole chimney at the ground level may [~~shall~~] not exceed 36 inches.

(5) Aboveground appurtenances.

(A) Fire hydrants and valves. When feasible, fire hydrants and blow-off valves shall [~~are to~~] be located at the right of way line. Fire hydrants may [~~shall~~] not be placed in the sidewalk or any closer than five feet from the back of the curb. Valve locations shall be placed so as not to interfere with maintenance of the highway.

(B) Water meters. Individual service meters shall be placed outside [~~the limits~~] of the department's right of way. Master meters for a point of service connection may be placed in a manhole with a maximum width of 48 inch inside diameter. If additional volume is required, a manhole with a neck of 60-inch depth shall [~~must~~] be used.

[~~(C) Service lines crossing highway by bore. Lines for customer service that cross the highway may be placed in a high-density polyethylene (HDPE) encasement pipe without joints (rolled pipe).~~]

(d) Non-potable [~~Nonpotable~~] water control facilities.

(1) Applicability. This subsection applies to agricultural irrigation facilities, water control improvement districts, municipal utility districts, flood control districts, canals, and similar non-potable [~~nonpotable~~] water control facilities.

(2) Depth of cover [~~for buried pipe facilities~~]. The minimum depth of cover, regardless of type of pipe used, is 36 inches for longitudinal utility facilities, and 60 inches from the lowest point of grade for all crossings [~~shall be 30 inches, but not less than 18 inches below any pavement structure~~].

(3) Encasement [~~for buried pipe facilities~~]. All [~~Unless the district approves another type of encasement, all~~] non-potable water control lines crossing under paved highways shall be encased [~~within the right of way must be placed in a steel encasement pipe~~]. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide.

(4) Location and design requirements. [~~Open ditch facilities and buried pipe facilities designed and constructed in accordance with this subchapter may be installed across the right of way.~~] Longitudinal buried pipe facilities installed within the right of way must conform with §21.41(c) of this subchapter (relating to Overhead Electric and Communication Lines), consistent with the clearances applicable to all roadside obstacles. Open ditch facilities may [~~shall~~] not be installed longitudinally within the department's right of way. Aboveground [~~, nor will any aboveground~~] appurtenances [~~be permitted~~] within the horizontal clearance of the highway facility are prohibited.

(5) Levee/ditch travel road location. Coordination with and approval by the district is required where levee/ditch travel roads intersect the highway.

(e) Sanitary sewer lines.

(1) Material type. All material types used for sanitary sewer lines must [~~shall~~] conform to applicable provisions of 30 TAC Chapter 217 and applicable local requirements.

(2) Depth of cover. The minimum depth of cover for gravity lines is [~~shall be~~] 30 inches and[~~, but~~] not less than 18 inches below any pavement structure. The minimum depth of cover for pressurized sanitary sewer lines is 60 inches for crossings and 36 inches for longitudinal utility facilities.

(3) Encasement. All [~~Pressurized line~~] crossings of [~~under~~] paved highways within the [~~limits of the~~] right of way shall be encased [~~placed in a steel encasement pipe~~]. [~~Gravity flow lines not conforming to the minimum depth of cover shall be encased in steel or concrete.~~] At the district's discretion, the district may exempt the encasement requirement [~~may be omitted~~] under center medians and outer separations that are more than 76 feet wide.

(4) Manholes. Manholes serving sewer lines up to 12 inches shall have a maximum inside diameter of 48 inches. For lines larger than 12 inches, the manhole inside diameter may be increased an equal amount, up to a maximum diameter of 60 inches. Manholes for large interceptor sewers shall be designed to keep the overall dimensions to a minimum. The outside diameter of the manhole chimney at the ground level may [~~shall~~] not exceed 36 inches.

(5) Lift stations. Lift stations and pump stations for sanitary sewer lines [~~exceeding 48 inches inside diameter~~] shall be located outside [~~the limits~~] of the department's right of way.

(f) Electric lines [~~and communication Lines~~] .

(1) [~~Underground electric lines.~~]

[~~(A)~~] Depth of cover for longitudinal placement. All underground electric lines placed longitudinally within the right of way may be installed by direct bury at depths equal [~~according~~] to or greater

than 48 inches[the voltage of electric lines as required by the National Electrical Safety Code and as shown in the following chart].
[Figure: 43 TAC §21.40(f)(1)(A)]

(2) Depth of cover for crossings. The minimum depth of cover for underground electric lines is 60 inches below the lowest point of the crossed grade.

(3) [(B)] Encasement. Electric lines crossing the roadway shall be encased in high-density polyethylene (HDPE) [steel] or comparable material with a strength greater than or equal to that of ductile iron, with satisfactory joints, or materials and designs that [will] provide equal or better protection of the integrity of the highway system and resistance to damage from corrosive elements to which they may be exposed. The lines shall be buried a minimum of 60 [36 inches under highway ditches, and] inches below the lowest point of grade [the pavement structure]. Encasement shall be provided as outlined in this section.

(4) [(C)] Installation. [Longitudinal underground electric lines may be placed by plowing or open trench method. All plowing and trenching shall be performed in a uniform alignment with the right of way. If the installation of the facility is found to deviate from the approved location, the district, at its sole discretion, may require the adjustment of the facility to the approved location.] The utility facility shall be located as set forth in §21.37(b) of this subchapter (relating to Design).

(5) [(D)] Aboveground appurtenances.

(A) [(i)] Aboveground appurtenances installed as part of an underground electric line shall be located at or near the right of way line, and may [shall] not impede highway maintenance or operations.

(B) [(ii)] Structures that are larger in plan view than single poles may be placed on the right of way if:

(i) [(I)] the installation does [will] not hinder highway maintenance operations;

(ii) [(II)] the housing is [will be] placed at or near the right of way line;

(iii) [(III)] the installation does [will] not reduce visibility and sight distance of the traveling public;

(iv) [(IV)] the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement or accommodation of other utility lines is apparent;

(v) [(V)] the outside width, length (longitudinal with respect to the right of way), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches, respectively;

(vi) [(VI)] the supporting slab does not project more than three inches above the ground line, nor extend more than 12 inches on either side of the housing structure; and

(vii) [(VII)] the installation is [will be] compatible with adjacent land uses.

(6) [(E)] Manholes. Manholes serving electric [and communication] lines shall conform to the requirements of this section.

[(F) Abandonment. Underground electric lines may be abandoned in place at the discretion of the district.]

(g) [(2)] Underground communication lines.

(1) Joint duct banks. In an effort to reduce transportation infrastructure costs, support traffic management, improve safety, and congestion mitigation, a utility shall install a joint duct bank and shall allow other utilities to use it. Where a department joint duct bank is available, a utility may install a utility facility in the duct bank.

(2) Depth of cover for crossings.

[(A) Longitudinal.] The minimum depth of cover for communication lines is 60 inches below the lowest point of the crossed grade. [for cable television and copper cable communications lines shall be 24 inches. The minimum depth of cover for fiber optic facilities shall be 42 inches. If the utility that is the owner/operator of a fiber optic facility waives damages and fully indemnifies the department in a form acceptable to the department, the minimum depth of cover may be reduced to not less than 36 inches.]

[(B) Crossings.]

(3) [(i)] Depth of cover for longitudinal placement. The minimum depth of cover for the longitudinal placement of [cable television and copper cable] communication lines is 48 inches [shall be 24 inches under ditches or 18 inches beneath the bottom of the pavement structure, whichever is greater].At a district's discretion, the district may allow communication lines to be installed at a depth of 42 inches in rocky terrain.

[(ii) The top of the fiber optic facility shall be placed a minimum of 42 inches below the ditch grade or 18 inches below the pavement structure or 60 inches below the top of the pavement surface, whichever is greater. The department may authorize a minimum depth of cover of not less than 36 inches below the ditch grade or 60 inches below the top of the pavement surface, whichever is greater, if the utility waives damages and fully indemnifies the department in a form acceptable to the department.]

[(iii) The department may require encasement or other suitable protection when necessary to protect the highway facility when the line is located:]

(I) at less than minimum depth;]

(II) near the footing of a bridge or other highway structure; or]

(III) near another hazardous location.]

[(iv) Unless the line is encased, installation shall be accomplished by boring a hole the same diameter as the line. The annular void between a drilled hole and the line or casing shall be filled with a material approved by the district to prevent settlement of any part of the highway facility over the line or casing.]

(4) Encasement. Communication lines shall be encased in accordance with Figure §21.40(g)(5) for all crossings. The external encasement must be a high-density polyethylene (HDPE) pipe with a size dimension ratio of 11 or less or an equivalent encasement. A carrier cable inside of the external encasement must have an additional internal conduit that is HDPE or equivalent. The external encasement must allow for the addition of at least one internal conduit and for the removal or replacement of internal conduits, as needed. The reamed bore size may not exceed 40 percent of the outside diameter of the external encasement, and a reamer that allows the natural wet grout to remain shall be used.

(5) [(C)] Installation. Longitudinal communication lines [Lines] may be placed by plowing or open trench method and shall be located on uniform alignment with the right of way and as near as practical to the right of way line to provide space for possible future highway construction and for possible future utility installations.
Figure: 43 TAC §21.40(g)(5)

(6) [(D)] Multiple conduits.

(A) [(i)] Shared conduits. When an existing utility rents, leases, or sells conduit usage to another utility, the utilities [new utility and the conduit owner] must jointly submit a use and occupancy agreement before placement of a new line within the conduit. A department permit is required before the installation.

(B) [(ii)] Additional conduits. No more than two additional empty conduits may be added for every full conduit line, unless otherwise approved by the district.

(C) All new conduits installed in the department's right of way shall be labeled with utility name and phone number at each point of access.

(7) [(E)] Aboveground appurtenances.

(A) [(i)] Aboveground pedestals or other utility appurtenances installed as a part of an underground communication line shall be located at or near the right of way line, so as not to impede highway maintenance or operations.

(B) Hand holes may be installed at or below grade within five feet of the department's right of way line but only when sufficient width is available between curbs, sidewalks, and the right of way line. Their length may not exceed six feet and width may not exceed five feet. The cover must be rated for loads appropriate to the given location. Hand holes may not be installed in a sidewalk.

(C) [(ii)] Large equipment housings. Structures that have a diameter [are] larger [in plan view] than 18 inches [single poles] may be placed on the right of way if:

(i) [(I)] the installation does [will] not hinder highway maintenance operations;

(ii) [(II)] the housing is [will be] placed at or near the right of way line;

(iii) [(III)] the installation does [will] not reduce visibility and sight distance of the traveling public;

(iv) [(IV)] the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement and accommodation of other utility facilities [lines] is apparent;

(v) [(V)] outside width, length (longitudinal), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches, respectively;

(vi) [(VI)] the supporting slab does not project further than three inches above ground line, nor extend further than 12 inches on either side of the housing structure; and

(vii) [(VII)] the installation is [will be] compatible with adjacent land uses.

(8) [(F)] Abandonment. Underground communication lines may not be abandoned in place and shall be removed when no longer in use. Encasements may be abandoned in place at the discretion of the district.

§21.41. Overhead Electric and Communication Lines.

(a) Type of construction. Longitudinal lines on the right of way shall be limited to single pole construction. Where an existing or proposed utility facility is supported by "H" frames, the same type structures may be utilized for the crossing provided all other requirements of this subchapter are met.

(b) Vertical clearance. The minimum vertical clearance above the highway at the largest vertical sag of the line is [shall be] 22 feet for electric lines, and 18.5 [18] feet for communication and cable television lines. The minimum vertical clearance for longitudinal lines on the right of way at the largest vertical sag of the line is 22 feet for electric lines, and 18 feet for communication lines. These clearances may be greater, as required by the National Electric Safety Code and governing laws.

(c) Horizontal clearances. Horizontal clearances or clear zones must conform to the department's publication, *Roadway Design Manual.* Clear zone requirements may vary based on speed limit, functional classification of the highway, location of the highway, and average daily traffic. [The following table indicates the design values for horizontal clearances:]
[Figure: 43 TAC §21.41(c)]

(d) Location.

(1) Poles supporting longitudinal lines shall be located within three feet of the right of way line, except that, at the option of the department, this distance may be varied at short breaks in the right of way line. Pole and guy wire installations may not encroach on current American Disabilities Act (ADA) clearances. Poles with widths measured at the widest part of the pole base that are [bases] greater than 36 inches in diameter may [shall] not be placed within the department's right of way. For overhead crossings at intersections, bridges, or large drainage structures that require greater vertical clearances or longer spans, the pole width measured at the widest part of the pole base may not be greater than 42 inches. Guy wires placed within the right of way shall be held to a minimum and be in line with the pole line. Other locations may be allowed, but in no case shall the guy wires or poles be located closer than the minimum allowed by the department's horizontal clearance policy, as shown in subsection (c) of this section.

(2) Poles may [shall] not be placed in the center median of any highway. At the department's discretion, poles may be placed in the outer separations or more than three feet inside the right of way where the right of way is greater than 300 feet and where poles can be located in accordance with the department's horizontal clearance policy, as shown in subsection (c) of this section.

(3) Overhead electric and [,] communication [, and cable television] line crossings at bridges or grade separation structures are prohibited. Overhead lines may [shall] not be located below any bridge structure. If rerouting the line completely around the structure and approaches is not feasible, a minimum horizontal distance of 150 feet from the bridge abutment joint and a minimum vertical clearance of 30 feet above [the point of] crossing the highest point of the bridge pavement and retaining walls is required to ensure adequate safety for construction and maintenance operations.

(4) Overhead electric lines crossing a highway must conform with §21.37(b)(4) of this subchapter (related to Design). This requirement applies to new and existing utility facility crossings.

(5) Overhead electric and communication lines running longitudinal to the bridge or grade separation structures must maintain a clearance of 30 feet above the highest point of the bridge pavement or any retaining wall.

(6) When installing overhead electric and communications lines at intersections, a utility shall follow the right of way offset, if applicable, as shown in Figure §21.41(d)(6). Overhead electric or communication lines must have a minimum of 10 feet clearance from any department structure.
Figure: 43 TAC §21.41(d)(6)

(7) Only one set of pole lines for all utilities will be permitted for longitudinal installation within a segment of the right of way, unless the department, in its sole discretion, determines that one set of

pole lines is impractical. Joint use of the pole lines is required, unless the department, in its sole discretion, determines that joint use of the pole lines is unsafe or impractical.

(e) Markers. Electric poles and communication lines [~~Utility poles~~] must bear, in a format acceptable to the department, readily identifiable plaques or other approved markers denoting ownership and use, at a frequency [~~distance~~] of every other pole [~~approximately one pole per 1,320 feet~~], as equally spaced as practicable, and at every crossing[~~, in a format acceptable to the department~~]. Each company connecting to a pole shall appropriately identify its use of the pole. There shall be a beginning and end marker for each user of the pole line.

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 March 31, 2022.

TRD-202201111
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 15, 2022
For further information, please call: (512) 463-8630

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SUBCHAPTER P. UTILITY RELOCATION PREPAYMENT FUNDING AGREEMENTS

43 TAC §§21.921 - 21.930

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§21.921. Purpose.

§21.922. Definitions.

§21.923. Eligibility.

§21.924. Application Procedure.

§21.925. Master Agreement.

§21.926. Calculation of Annual Prepayment Amount.

§21.927. Project Utility Agreement.

§21.928. Utility Cost Estimates.

§21.929. Reimbursement.

§21.930. General Requirements.

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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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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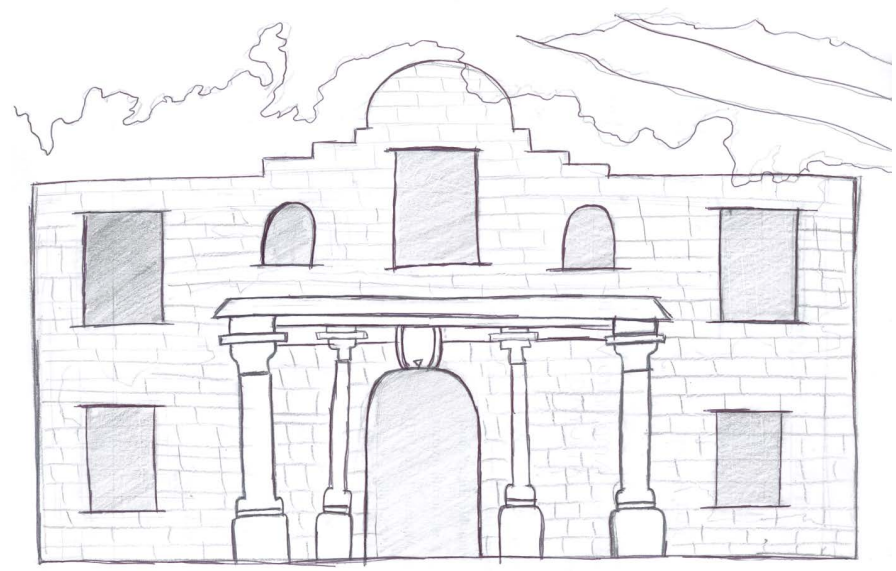

ADOPTED RULES

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 13. CULTURAL RESOURCES

PART 7. STATE PRESERVATION BOARD

CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

13 TAC §111.13

The State Preservation Board (SPB) adopts the repeal of 13 TAC §111.13, concerning Exhibitions in the Capitol and Capitol Extension without changes as proposed in the text published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9146). The rule will not be republished.

No comments were received during the comment period of 12-31-21 to 1-31-22.

The SPB proposed the repeal of 13 TAC §111.13 because the agency does not need the rule in order to serve its intended purpose of providing for the display of government speech in the Capitol that educates, informs, and unites.

This action is requested under Texas Government Code §443.007(b), which authorizes the SPB to adopt rules concerning certain buildings, their contents, and their grounds.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2022.

TRD-202201113
Leslie Pawelka
Attorney
State Preservation Board
Effective date: April 20, 2022
Proposal publication date: December 31, 2021
For further information, please call: (512) 463-4180

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13 TAC §111.45

The State Preservation Board (SPB) adopts amendments to §111.45, relating to Sick Leave Pool, retitling the rule "Employee Leave Pools" and adding new subsection (b). Existing §111.45 will now be §111.45(a), Employee Sick Leave Pool, and new §111.45(b) will be Employee Family Leave Pool. The amendments are adopted without changes to the text as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9147). The rule will not be republished.

The new subsection is necessary to implement House Bill (HB) 2063, 87th Leg., R.S. (2021), which created a state employee family leave pool by the addition of new Subchapter A-1 to Chapter 661. The additional proposed amendments are necessary to update the existing rule relating to the sick leave pool for consistency with the proposed new subsection.

No comments were received during the comment period, which lasted from from December 31, 2021 to January 31, 2022.

The amendments are adopted under Government Code §661.022(c), which requires state agencies to adopt rules relating to the operation of the agency family leave pool, and Government Code §661.002(c), which requires state agencies to adopt rules relating to the operation of the agency sick leave pool.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2022.

TRD-202201115
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Proposal publication date: December 31, 2021
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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.218

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.218 relating to

Middle Mile Broadband. The commission adopts this rule with changes to the proposed rule as published in the December 31, 2021, issue of the *Texas Register* (46 TexReg 9150). The rule will be republished. This rule will facilitate implementation of middle mile broadband service in unserved and underserved areas of Texas by allowing amenable electric utilities to lease excess fiber capacity to internet service providers (ISPs). These electric utilities are required to submit written middle mile broadband service plans for review by the commission as required by Chapter 43 of the Public Utility Regulatory Act (PURA) as amended by House Bill (HB) 3853 by the 87th Texas Legislature, Regular Session.

The commission received comments on the proposed rule from AEP Texas Inc., Southwestern Electric Power Company, CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, Texas-New Mexico Power Company, and Southwestern Public Service Company (collectively Joint Utilities); City of Houston; Connected Nation Texas (CN Texas); Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); Steering Committee of Cities Served by Oncor and the Texas Coalition of Cities for Utility Issues (collectively, Cities); Texas 2036; Entergy Texas, Inc. (ETI); Texas Broadband Development Office (BDO); Texas Cable Association (TCA); Office of Public Utility Counsel (OPUC); and United Telephone Company of Texas, Inc. d/b/a CenturyLink, Central Telephone Company of Texas, Inc. d/b/a CenturyLink, CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink, CenturyTel of San Marcos, Inc. d/b/a CenturyLink, and CenturyTel of Port Aransas, Inc. d/b/a CenturyLink (collectively, CenturyLink).

Question 1

Under PURA §43.051(a), an electric utility may own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service in unserved and underserved areas. Chapter 43 of PURA (relating to Provision of Middle Mile Broadband Service by Electric Utilities) does not define or provide guidance on what constitutes an unserved or underserved area. The commission posed a question for comment, regarding whether the terms "unserved area" and "underserved area" should be defined in the rule, and if so, how.

Should "unserved areas" and "underserved areas" be defined?

BDO, Cities, TCA, OPUC, Joint Utilities, Texas 2036, ETI, CN Texas, City of Houston, CenturyLink, and AT&T supported including definitions for "unserved" and "underserved" in the proposed rule. Cities noted that HB 3853, the Texas Utilities Code, Texas Water Code (TWC) and the commission's substantive rules either did not define "unserved area" and "underserved area" or defined the terms inconsistently.

Cities commented that defining "unserved area" and "underserved area" will assist efforts to target communities in need of broadband service and more efficiently implement the middle mile broadband application process. Therefore, Cities argued the commission should provide an objective standard of "unserved area" and "underserved area" to effectuate the intent of Chapter 43 of PURA. CenturyLink refrained from taking a position on the specific definitions of "unserved area" and "underserved area" and deferred to the proposed definitions of other commenters.

Commission Response

The commission agrees that the terms "unserved area" and "underserved area" should be defined. The commission adopts the following definitions, as discussed in greater detail below.

Underserved area -- means one or more census blocks that are not an unserved area and in which 80 percent or more of end-user addresses in each census block either lack access to broadband service with a download speed not less than 100 megabits per second and an upload speed not less than 20 megabits per second, or lack access to reliable broadband service with those speeds as determined using Federal Communications Commission mapping criteria, if available.

Unserved area -- means one or more census blocks, in which 80 percent or more of the end-user addresses in each census block either have no access to broadband service, or lack access to reliable broadband service as determined using Federal Communications Commission mapping criteria, if available.

Should the commission take state and federal broadband availability maps into consideration in developing definitions of "unserved area" and "underserved area"?

PURA §43.102(c) requires the commission to approve, modify, or reject an application to provide middle mile broadband service not later than the 181st day after the application is submitted. Accordingly, a threshold consideration for the definitions of unserved and underserved areas is whether the definitions will allow the commission to efficiently verify whether an area is unserved or underserved.

BDO argued that the definitions of "unserved area" and "underserved area" should be based on established standards and that the adopted rule should incorporate a validation method, such as referencing the federal and state maps. BDO, City of Houston, and TCA each referred to the Infrastructure Investment and Jobs Act (IIJA) passed in 2021. The IIJA defines "unserved location" and "underserved location" as areas that are determined in accordance with the Federal Communication Commission's (FCC's) broadband maps. These federal maps exist today but will be updated with additional criteria to enhance accuracy in late 2022 or early 2023. BDO will also establish a statewide broadband availability map by January 1, 2023, which will assess broadband availability based upon address-level data.

Commission Response

The commission agrees with BDO that the designation of areas as unserved or underserved should be based on established standards, particularly because middle mile broadband plans need to be processed quickly. Because the federal and state maps will provide objective criteria for middle mile broadband plan validation and are relevant for access to broadband funding programs, the commission takes these maps into account in developing the adopted definitions of unserved and underserved areas.

What is the relevant standard for "broadband service" when defining "unserved" or "underserved" areas?

Under PURA §43.003(1), "broadband service" is defined as "retail Internet service provided by a commercial Internet service provider with the capability of providing a download speed of at least 25 megabits per second and an upload speed of at least 3 megabits per second." This standard is commonly referred to as the "25/3 benchmark" for broadband service.

BDO, Cities, TCA, OPUC, Joint Utilities, Texas 2036, ETI, CN Texas, and City of Houston agreed that the 25/3 benchmark is

the objective standard of broadband service. Each of these parties, except for OPUC, advocated that the definitions of both unserved and underserved areas should incorporate the 25/3 benchmark. OPUC incorporated the 25/3 benchmark into its recommended definition of "underserved area" but defined "unserved area" as "a geographic area that currently lacks any internet service options." Joint Utilities opposed OPUC's proposed definitions as inconsistent with legislative intent as OPUC does not utilize the 25/3 benchmark or otherwise reference broadband service in its proposed definition of "unserved area."

Commission Response

The commission agrees with commenters that the 25/3 bandwidth benchmark is the appropriate standard for broadband service. The 25/3 bandwidth benchmark is included in the definition of broadband service in PURA §43.003(1) and is incorporated into both federal and state mapping efforts. Accordingly, the commission incorporates the 25/3 bandwidth benchmark into the adopted definitions of "unserved area" and "underserved area."

BDO further recommended that the commission consider the effect on the definitions in question of potential future changes by the FCC to the 25/3 benchmark for broadband service. Joint Utilities and City of Houston agreed with BDO that the definitions of "unserved area" and "underserved area" should be updated on an ongoing basis if the BDO and FCC update the 25/3 speed benchmark but recommended this be accomplished by modifying the definition of "broadband service" under proposed subparagraph (b)(2), rather than directly modifying the definitions of "unserved area" and "underserved area."

Commission Response

The commission declines to add language to the definitions of "broadband service" or "unserved area" and "underserved area" that would actively cross-reference to any current FCC broadband speed benchmark. In addition, the definitions as adopted provide a greater degree of certainty for utilities submitting plans under this rule.

Should the terms latency and reliable broadband service be included in the definitions of underserved areas and unserved areas?

The IIJA specifically refers to "reliable broadband service" and "latency," which are not terms or criteria utilized in Chapters 490H and 490I of the Texas Government Code or in PURA Chapter 43. Texas 2036 provided draft language for the definition of underserved area that includes "resilient and reliable broadband connections." TCA opposed Texas 2036's proposal as beyond the scope of PURA Chapter 43 and this rulemaking.

Commission Response

The commission includes the statement "or lack access to reliable broadband service with those speeds, as determined using Federal Communications Commission mapping criteria, if available" to the definitions of "underserved area" and "unserved area."

Under IIJA §60102(a)(1)(L), "reliable broadband service" is defined as "broadband service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life, or other criteria, other than upload and download speeds, as determined by the Assistant Secretary in coordination with the (FCC)," and latency is referenced as "latency sufficient to support real-time, interactive applications." Accordingly, the commission interprets reliability to be inclusive of latency.

Because reliability may be a mapping criterion for the FCC and the adopted rule requires validation of whether an area is unserved or underserved, the adopted rule must contemplate reliability, or the commission will not be able to rely upon the federal maps in determining if an area is unserved or underserved. If, for example, the commission does not consider the reliability of broadband service and the FCC designates an area as unserved or underserved on its map but does not indicate which criterion, the speed benchmark or reliability, was used to make that designation, the commission would not be able to rely upon the map's designation. Alternatively, if an FCC map does make clear whether the speed benchmark or reliability is used to designate an area as unserved or underserved, and the commission does not include reliability in its definitions, under the rule a utility's ability to offer middle mile broadband service could be called into question, despite the area being designated as unserved or underserved by a credible federal agency. Both outcomes are undesirable.

However, it is not yet clear whether and to what extent the FCC will incorporate the concept of reliability into its map, or if it will determine if an area is unserved based on reliability, the bandwidth benchmark standard, or both. Accordingly, the commission includes "if available" to account for the possibility that the FCC maps may not include such reliability criteria. Additionally, the reference to "mapping criteria" instead of a direct reference to the map itself is included in the adopted definitions to provide discretion for the commission to properly consider relevant and verifiable data errors in the federal maps. Should such errors be discovered, the commission can assess the reliability of service in an area by considering the mapping criteria rather than the map itself. In the absence of relevant and verifiable data errors, the maps are presumed to be accurate applications of the relevant mapping criteria.

What constitutes an "area"?

BDO, Cities, TCA, OPUC, Joint Utilities, Texas 2036, ETI, CN Texas, and City of Houston argued that the term "area" is ambiguous and should be clarified. Joint Utilities and ETI recommended the commission utilize the term "census block" as it appears in Texas Government Code §490H.001(3).

Commission Response

The commission determines that an "area" be defined in terms of "one or more census blocks.", Census block is the standard measurement used by the BDO and the FCC in compiling each agency's map for middle mile broadband implementation. The adopted rule specifies "one or more census blocks" because plans submitted under the rule will foreseeably encompass multiple census blocks.

The commission declines to use the term "location" in lieu of the term "area" in the definitions of "unserved area" and "underserved area," because the adopted definitions maximize the commonalities between state and federal statutes.

Should the definitions include a percentage threshold for the number of end-user addresses that receive broadband service?

Texas 2036, TCA, and Joint Utilities expressed concern that an area that is eligible for middle mile broadband service could lose its designation as unserved or underserved if even a few addresses have access to broadband service. These commenters recommended including a qualification in one or both definitions

that only a certain percentage of addresses must lack access to broadband service to qualify.

With regard to unserved areas, Texas 2036 and Joint Utilities proposed implementing an 80 percent threshold. Specifically, if fewer than 80 percent of the addresses in an area have access to broadband service, then the area should qualify as unserved. Texas 2036 concluded that its proposed definition of "unserved" helps ensure continuity across the Texas state government.

With regard to underserved areas, Joint Utilities supported an 80 percent threshold in reply comments, after initially opposing a percentage threshold. Specifically, Joint Utilities recommended that "underserved areas" be defined as locations that are not unserved, but in which fewer than 80 percent of the addresses have access to broadband service at an enhanced benchmark standard, which is more fully discussed below. Joint Utilities compared the 80 percent threshold with the federal Farm Bill Broadband Loans and Loan Guarantees which, among other things, includes a 15 percent threshold for unserved addresses. TCA opposed Joint Utilities' initial position, which would require a utility to demonstrate as part of its application, "the expected improvement in service in an area," as too vague. In TCA's view, under Joint Utilities proposed definition, an entire area would be considered "underserved" for purposes of the rule if a single customer in the area did not have access to broadband.

AT&T proposed as an alternative that a "significant number" of end-users need to lack access to broadband services at an enhanced download speed for area to qualify as underserved.

Commission Response

The commission includes an 80 percent threshold in the definitions of both unserved area and underserved area, consistent with similar provisions in both state and federal law. This inclusion harmonizes the relevant definitions in the rule with the BDO and FCC mapping initiatives and provides clarity to utilities submitting middle mile broadband service plans under this rule. Specifically, Texas Government Code §490I.0105(1) and (2) utilize the 80 percent threshold as a criterion for eligibility for inclusion in the BDO's planned map. The 80 percent threshold under Texas Government Code §490I.0105(1) and (2) applies only to what would be considered "unserved" locations under the adopted rule. Similarly, the IIJA utilizes the 80 percent threshold in the definitions of "unserved service project" and "underserved service project" which are criteria for the planned FCC map. Given that the 80 percent threshold is fundamental to the state and federal mapping criteria, the commission accordingly adopts the 80 percent threshold in the definitions.

The commission further refines the definitions of "unserved area" and "underserved area" by specifying the 80 percent threshold applies to end-user addresses as both state and federal law incorporate such a standard.

Should areas receiving federal funding be exempt from the definitions of unserved and underserved?

TCA recommended excluding from the definitions of "unserved" and underserved" areas that are provided federal funding, such as under RDOF, to prevent conflicts with FCC regulation of interstate telecommunications. CenturyLink and City of Houston supported TCA's proposed exception to the definitions of "unserved area" and "underserved area."

Joint Utilities and AT&T opposed TCA's recommendation. Joint Utilities argued that federal funding provisions in Texas Government Code §490I.0105(a)(1)(B) and (2)(B) are irrelevant to the proposed rule's implicit questions of eligibility to provide middle mile broadband service and whether such service is being provided in unserved or underserved areas. Joint Utilities further opposed the limitations recommended by TCA as placing an artificial barrier to entry for potential competitors. Joint Utilities maintained that the receipt of federal funds has no bearing on whether an area is unserved or underserved. Additionally, Joint Utilities asserted there is no basis in statute for imposing such a limitation and that the proposed rule properly accounts for applicants that may have received federal or state funding, which must be included in a utility's middle mile broadband plan. AT&T opposed TCA's recommendation and stated that TCA's proposed exception for the term "underserved" is overly stringent.

Commission Response

The commission declines to adopt TCA's recommendation to except areas already receiving federal funding from the definitions of "unserved area" and "underserved area." This exception is not contemplated by PURA Chapter 43 and the inclusion of such areas within the definitions does not conflict with FCC regulation of interstate telecommunications. On the contrary, the categorical exclusion included by TCA would inhibit the goal of PURA Chapter 43 to encourage the provision of middle mile broadband service by electric utilities as Phase I RDOF grants cover a considerable portion of rural areas in Texas. Consequently, an applicant utility and the leasing ISP would be barred from all RDOF-covered locations without regard to whether the area is "unserved" or "underserved."

Should an "underserved area" be subject to an enhanced bandwidth benchmark?

Cities indicated that other jurisdictions have defined "underserved area" as an area that has internet access below the 25/3 benchmark but does not meet the definition of "unserved area." Cities recommended the term "underserved area" incorporate a range of download and upload speeds because a specific threshold such as the 25/3 benchmark "could limit service to certain areas of Texas that might still experience issues with connectivity" and unnecessarily restrict the applicability of middle mile broadband implementation. Joint Utilities agreed with Cities that the definition of underserved should not be a specific threshold, but instead be a range. Joint Utilities further commented that including an enhanced benchmark for broadband service at a download speed of at least 100 megabits per second (Mbps) and an upload speed of at least 20 Mbps (100/20 benchmark) to the definition of "underserved area" is viable, but, if adopted, should be based on the percentage of customers in the area receiving broadband service meeting the 25/3 benchmark. Accordingly, Joint Utilities proposed that the terms "unserved area" and "underserved area" be interpreted to expand the availability of broadband service to customers who do not currently have access to such service and recommended that "underserved area" be defined as "an area in which broadband service is not available to all of the potential customers in the area."

BDO, TCA, and City of Houston noted that "unserved" is defined in Texas Government Code 403.503(a)(4) as "a location that lacks access to a retail fixed, terrestrial, wireline, or wireless internet service capable of providing (download and upload speeds)" at the 25/3 benchmark or faster. BDO noted that this definition of unserved area does not include "satellite internet access or latency benchmarks."

BDO commented that the term "underserved" remains undefined in Texas statutes. However, BDO elaborated, the term is generally associated with areas receiving broadband service that meet the 25/3 benchmark but "lack sufficient access to meet the needs of residents." The 25/3 benchmark is considered a minimum standard and is frequently criticized as "too slow to meet the contemporary needs of families and small businesses" and that the coronavirus pandemic has highlighted the need for dependable broadband service. BDO further referenced the IIJA for the definition of "underserved area" which incorporates a 100 Mbps download and 20 Mbps.

City of Houston, CN Texas, TCA, and AT&T specifically recommended the commission's definition of "underserved area" use the 100/20 benchmark.

Commission Response

The commission agrees with BDO, TCA, City of Houston and CN Texas and adopts the 25/3 and 100/20 benchmarks used in the federal IIJA, and in Texas Government Code Chapters 490H and 490I for defining "unserved area" and "underserved area," respectively.

The commission declines to adopt a range of download or upload speeds as a standard for either definition as this approach would conflict with state and federal mapping criteria. The federal IIJA and Texas Government Code Chapters 490H and 490I govern implementation of the FCC and BDO maps, respectively. The 25/3 benchmark is the basis for the definition of "unserved area" in both the IIJA and Texas Government Code. The IIJA utilizes the 100/20 benchmark in the definition of "underserved area." The adopted definitions of "unserved area" and "underserved area" substantially address commenters' concerns and harmonize the provisions of PURA relating to middle mile broadband service with other state and federal statutes that are intended to promote the deployment of broadband service in areas with limited broadband service.

Texas 2036 recommended that the definition of "underserved area" include an increased bandwidth benchmark of at least 100 upload and 100 Mbps. Texas 2036 noted that its proposed definition of "underserved area" is a more general version of the "eligible area" designation that BDO requires for state funding under Texas Government Code §490I.

TCA strongly opposed Texas 2036's proposed definition of "underserved area" as it "would potentially envelop a majority of the state"¦as underserved" by using a 100 Mbps upload and 100 Mbps download benchmark, and therefore divert investment and broadband service away from "unserved" areas altogether. TCA opposed a higher threshold for the definition of underserved as proposed by some commenters as it would not effectuate the intent of the Legislature to provide middle mile broadband service where it is most needed. Accordingly, TCA recommended the definition of "underserved area" be based on "objective and quantifiable facts, such as state and federal statutes."

Texas 2036 provided draft language for "underserved area" with reference to a 100 upload and 100 download Mbps benchmark, affordable broadband service, and "resilient and reliable broadband connections."

Commission Response

The commission declines to implement Texas 2036's proposed definition of "underserved area" that utilizes a 100 Mbps upload and 100 Mbps download speed. The 100/100 benchmark is not cited in either state or federal law implementing broadband or middle mile broadband service programs. Therefore, adopting such a standard would be inconsistent with such initiatives. The commission declines to implement Texas 2036's proposed additional criteria for the definition of "underserved area" regarding a "lack of middle mile infrastructure with the ability to support resilient and reliable broadband connections in the form of a backup due to unforeseen disconnections" for the same reasons.

Should the definition of "underserved" refer to last mile networks?

Texas 2036 recommended the definition of "underserved area" include additional language to ensure the bandwidth benchmark applies to the service received by the last mile network to which the middle mile broadband service would connect.

TCA opposed Texas 2036's proposals as beyond the scope of PURA Chapter 43 and this rulemaking.

Commission Response

The commission declines to adopt Texas 2036's recommendation to modify the definition of underserved area to clarify that the bandwidth benchmark applies to last mile broadband service. The adopted definition of "underserved area" applies the bandwidth benchmark to service received by the "end-user," which substantively addresses Texas 2036's concern.

Should the definition of "underserved" require a demonstration of identified need?

Texas 2036 recommended that the definition of "underserved area" include a requirement that the area has an "identified need" for additional middle mile broadband infrastructure. Texas 2036 also recommended the addition of a new provision of the rule directing the commission to coordinate with the BDO in making a determination of identified need and included a nonexclusive list of factors the commission must consider in doing so. This list included factors such as existing broadband service performance, federal and state data, and reports from community organizations. Texas 2036 noted that its list of factors is "identical to the list adopted by the U.S. Department of Treasury in the issued Final Rule for the Coronavirus State and Local Fiscal Recovery Funds."

TCA opposed Texas 2036's proposals as beyond the scope of PURA Chapter 43 and this rulemaking.

Commission Response

The commission declines to adopt Texas 2036's recommendation to add a new section relating to "identified need" in the proposed rule. Texas 2036's proposed factors relating to broadband service performance, existing infrastructure, and federal and state broadband data will be detailed in the BDO and FCC's planned maps. Other proposed factors such as those regarding community interviews and reports, may also be incorporated into the methodology for the BDO and FCC, such as the "community surveys" described under Texas Government Code §490I.0105(l). As discussed above, the commission relies upon the subject matter expertise of the BDO and FCC, via each agency's respective map, in determining whether an area is unserved or underserved, by utilizing components of existing federal and state definitions in the adopted rule.

Proposed §25.218(b); definitions; "affiliated internet service provider"

The proposed rule prohibits a utility from providing middle mile broadband service to an affiliated internet service provider. OPUC recommended the proposed rule include a new definition for "affiliated internet service provider" for clarity and provided recommended language.

TCA and Joint Utilities opposed OPUC's proposed new definition for "affiliated internet service provider" as unnecessary as the term "affiliate" is already defined in commission rules and in PURA. TCA further argued that OPUC's proposed definition "may also unintentionally allow an electric utility to create an intermediary affiliate to avoid the prohibitions under the rule." Alternatively, if the commission decides to add the new definition of "affiliated internet service provider," TCA recommended deleting the phrase "that is also defined as an internet service provider under this section" from OPUC's proposed definition.

Commission Response

The commission agrees to define the term "affiliated internet service provider" to provide clarity, as recommended by OPUC. However, to address the concerns of TCA that OPUC's definition would create a loophole allowing utilities to provide middle mile broadband service to affiliates through intermediaries, the adopted rule defines affiliated internet service provider as "an internet service provider that is an affiliate of the electric utility that provides or intends to provide a plan for middle mile broadband service under this section." As TCA and Joint Utilities noted, "affiliate" is already comprehensively defined under 16 TAC §25.5 (related to Definitions) in a manner that addresses the issue of intermediate entities. By directly incorporating the defined term of "affiliate" into the definition of affiliated internet service provider, the commission substantively addresses TCA's concerns.

Proposed §25.218(b); definitions; "electric utility"

Joint Utilities and ETI recommended the proposed rule include a new definition under proposed subsection (b) for "electric utility" to clarify the applicability of the proposed rule. Specifically, Joint Utilities stated that most of the proposed rule language refers to transmission and distribution utilities (TDUs) and therefore the rule should define "electric utility" as including an electric utility and a TDU, as defined in PURA.

TCA opposed Joint Utilities' proposed new definition for "electric utility" as unnecessary as the term "electric utility" is already defined in commission rules and in PURA. OPUC supported Joint Utilities' proposal to define "electric utility" as it is an "essential term to define and set the parameters on what entities are permitted to provide middle mile broadband services."

Commission Response

The commission declines to adopt Joint Utilities and ETI's recommendation to define the term "electric utility" in the proposed rule, because it is unnecessary. The terms "electric utility" and "transmission and distribution utility" are already defined under §25.5(41) and (137). Moreover, PURA §43.002(a), which is incorporated as subsection (a) of the adopted rule, states "(t)his section applies to an electric utility and a transmission and distribution utility regardless of whether the utility is offering customer choice under PURA Chapter 39." To further emphasize that the term electric utility includes TDUs, adopted subsection (a) rephrases this language to read that this "section applies to an electric utility, including a transmission and distribution utility"¦."

Proposed §25.218(b)(1) - "Affected property owner"

Proposed paragraph (b)(1) defines the term "affected property owner" as "an owner of real property that is burdened by an easement or other property right owned or leased by an electric utility whose property is listed on the most recent tax roll of each county"¦and will be affected by the installation or operation of middle mile broadband service"¦."

Joint Utilities and ETI recommended that the definition of "affected property owner" under proposed paragraph (b)(1) be revised to "expressly exclude local and state government bodies that own public rights-of-way" as the statutory right for affected property owners to protest middle mile broadband implementation defined under Chapter 43 does not apply to state and local governments. Joint Utilities argued that "this is apparent from PURA §43.053(c)(1), which requires notice to property owners listed on the county tax roll, which does not include government bodies or public rights-of-way." Joint Utilities further argued that that such institutions have "rules, ordinances, and franchises governing the use of their public rights-of-way." Finally, Joint Utilities commented that PURA separately accounts for notice to property owners under §43.053 and for public rights-of-way under §43.101(e) and (f).

Cities strongly opposed Joint Utilities proposed changes to the definition of "affected property owner" under proposed paragraph (b)(1) excluding state and local governments that own public rights-of-way from the definition of "affected property owner" and recommended changes to the proposed definition as it "impliedly excludes cities and municipalities."

Cities noted that "affected property owner" is not consistently defined in PURA, the Texas Water Code (TWC), or the Texas Local Government Code and asserted that the statutory citations of Chapter 43 by Joint Utilities are "not relevant to the question of whether a city should receive notice when its rights-of-way may be impacted by installation of middle mile broadband services." Cities continued, stating that, "as stewards of the safety and accessibility within their areas, cities and municipalities should undoubtedly receive notice when any installation or project will impact public rights-of-way" for implementation of middle mile broadband service.

Cities maintained that excluding cities and municipalities from the definition of "affected property owner" deprives such institutions "of the opportunity to submit a written protest under PURA" and a city, municipality, or local government that owns public rights-of-way should be entitled to the same notice and hearing rights as any other affected property owner.

As an alternative, Cities proposed either omitting the use of "affected property owner" in proposed paragraph (f)(2) prescribing the notice and intervention deadlines, or changing the definition of "affected property owner" under proposed paragraph (b)(2) to expressly include local and state governments that own public rights-of-way.

TCA noted that Joint Utilities' proposed definition of "affected property owner" appears to be consistent with Chapter 43 of PURA and did not object to its inclusion.

Commission Response

The commission agrees with Cities that local governments should receive notice when an electric utility submits a written middle mile broadband plan for consideration by the commission. Under adopted subparagraph (f)(2)(B), notice must be sent by first class mail to municipalities crossed by or within five miles of the planned project and counties that are crossed

by the planned project. Furthermore, to the extent that a local government believes it has a justiciable interest in a middle mile broadband proceeding, it may file a motion to intervene in the proceeding.

The commission agrees with Joint Utilities that, although the statute does not expressly define affected property owner, it is clear that a local government such as a municipality is not an affected property owner insofar as it does not have the right to file a protest under PURA §43.053(d). The language of subsection (d) specifically grants the right to file protests to "a property owner *entitled to the notice* (emphasis added)" under subsection (c). Further, paragraph (c)(1) clarifies that this notice must "be sent by first class mail to the last known address of each person in whose name the affected property is listed on the most recent tax roll of each county authorized to levy property taxes against the property." Because the statute explicitly links the right of affected property owners to file a protest to persons entitled to receive notice under subsection (c) - which a local or state government is not, because its property is not listed on county tax rolls - the commission excludes state and local governments from the definition of affected property owner.

The commission also moves the language "(whose property) is listed on the most recent tax roll of each county authorized to levy property taxes against the property" from the definition of affected property owner to the notice provision under adopted clause (f)(2)(A)(i) to more accurately reflect PURA Chapter 43.

Proposed §25.218(b)(6) - "Middle mile broadband service"

Proposed paragraph (b)(6) defines the term "middle mile broadband service" for use within §25.218 as "the provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an internet service provider to provide broadband service. The term does not include provision of internet service to end-use customers on a retail basis."

CN Texas recommended the commission clarify the definition of "middle mile broadband service" under proposed paragraph (b)(6) to indicate that the term can include both "finished" (i.e., "˜lit') middle mile service or open access/"˜dark' fiber (indefeasible rights of use) for fiber pairs that are lit by the customer ISP." CN Texas noted "it is possible this definition may prohibit other middle mile network operators from leasing capacity to turn around and lease it to last-mile ISPs."

Commission Response

The commission declines to adopt CN Texas' recommendation to clarify that the definition of "middle mile broadband service" to include both lit and dark fiber. As noted by CN Texas, the statute does not make such a delineation.

Proposed §25.218(c) and (c)(1) - Authorization for middle mile broadband service

Proposed subsection (c) and paragraph (c)(1) authorize electric utilities to own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service *primarily* for unserved and underserved areas, grants sole discretion to an electric utility to implement middle mile broadband service, and prohibits an electric utility from being penalized for deciding to implement or not implement that service.

TCA, Cities, OPUC, ETI, City of Houston, CenturyLink, and AT&T opposed the inclusion of the term "primarily" in proposed paragraph (c)(1) as "it expressly contemplates the existence of unspecified customers other than unserved and underserved customers" and therefore creates a loophole for implementation that would be contrary to statutory intent and authority. Specifically, it would permit an electric utility to implement middle mile broadband service without limitation and undermine the objective of the rule and statute to provide broadband service to "unserved and underserved" customers. Similarly, OPUC stated that inclusion of the word "primarily" in proposed paragraph (c)(1) "would allow electric utilities to provide service to areas other than unserved and underserved areas." OPUC commented that PURA §43.051 authorizes electric utilities to provide middle mile broadband service only "in" unserved and underserved areas. OPUC reiterated that HB 3853, the legislation that underlies this rulemaking, was not intended to be a statewide authorization for middle mile broadband service and is specifically intended to provide service to "unserved" and "underserved" areas.

ETI also noted that the proposed rule language inappropriately "indicates that utilities can provide middle mile broadband service for areas that are not unserved or underserved, as long as the service is being provided primarily for those areas" and that inclusion of the term "primarily" would require a finding of fact determination for every commission review of a utility's middle mile broadband plan. AT&T commented that inclusion of "primarily" in proposed paragraph (c)(1) is an "unintended loophole" and contrary to statutory language and therefore should not be inserted in the rule.

Joint Utilities opposed other commenters' recommendations to delete the term "primarily" from proposed paragraph (c)(1) as provision of broadband service may involve "anchor institutions" such as libraries, schools, or hospitals. Joint Utilities also referenced CN Texas's comments, emphasizing that fiber utilized for middle mile broadband "will often traverse served areas to reach ISPs intending to serve unserved or underserved areas" which supports inclusion of the word "primarily" in proposed paragraph (c)(1). TCA noted that the "anchor institutions" listed by Joint Utilities are "identical to entities eligible for federal support under the Federal Communication Commission's E-Rate Program" which is designed to support local institutions such as schools and libraries but not determine whether an area is "unserved" or "underserved" and that the program is incapable of providing such guidance.

Commission Response

The commission agrees with TCA, Cities, OPUC, ETI, City of Houston, CenturyLink, and AT&T and replaces the term "primarily for" with the statutory language "in" as utilized in PURA §43.001 and §43.051. The commission also acknowledges that routes for middle mile broadband service may traverse served areas to ultimately allow an ISP to provide broadband service to end-users in unserved and underserved areas. The commission modifies paragraph (c)(1) to reflect that it is the broadband service provided by the ISP, not the entirety of the fiber used to provide middle mile broadband service, that must be located in an unserved or underserved area.

The commission does not agree with Joint Utilities' comments regarding the provision of middle mile broadband service to anchor institutions. Anchor institutions are not referenced in PURA Chapter 43, which directs the commission to adopt rules facilitating middle mile broadband service to unserved and underserved areas. Anchor institutions are a separate category from unserved and underserved areas under the federal Broadband Equity Access Deployment program, which supports the conclusion that the provision of middle mile broadband service to an-

chor institutions is distinguishable from the provision of such service to unserved and underserved areas.

Texas 2036 recommended proposed paragraph (c)(1) be revised to include the phrase "connecting last mile networks" and replaced "and" with "or" between the terms "unserved" and "underserved." Texas 2036 stated this proposed change would clarify that the proposed rule specifically applies to last mile networks in unserved or underserved areas and does not unnecessarily limit where middle mile broadband infrastructure can pass through as it is foreseeable that electric utility lines could cross through areas considered served, underserved, or unserved.

TCA opposed Texas 2036's recommendation as beyond the scope of PURA Chapter 43 and this rulemaking.

Commission Response

The commission declines to include language in (c)(1) as recommended by Texas 2036. As noted above, the commission modifies paragraph (c)(1) to reflect that it is the broadband service provided by the ISP, not the entirety of the fiber used to provide middle mile broadband service, that must be located in an unserved or underserved area. This modification substantively addresses Texas 2036's concerns.

Proposed §25.218(c)(2) - Nondiscriminatory access to fiber

Proposed paragraph (c)(2) requires an electric utility to not discriminate in selecting ISPs that may access excess fiber capacity and prohibits a utility from leasing to an affiliated internet service provider.

Joint Utilities and ETI recommended that proposed paragraph (c)(2) include a provision clarifying that an electric utility has the sole discretion to determine excess fiber capacity available to provide middle mile broadband service over its electric delivery system. Joint Utilities argued this provision is necessary due to the planning involved in reserving fiber capacity for future use by an electric utility or for when fiber lines are damaged. OPUC supported Joint Utilities' proposal to define "excess fiber capacity" to "clearly delineate for the utilities when they have excess fiber for planning purposes."

City of Houston and TCA opposed Joint Utilities' proposal to include a definition of "excess fiber capacity" in proposed paragraph (c)(2) as providing too much discretion to utilities in implementation of middle mile broadband. TCA asserted that only the commission has the sole discretion to determine the meaning of "excess fiber capacity" and that if the commission chooses to define it, the definition should at least include language indicating that it is "the amount of fiber capacity that is not being used for electric utility or its affiliate's electric utility purposes." Similarly, City of Houston recommended defining excess fiber capacity as "fiber capacity not needed for planned electric utility operations" under subsection (b).

Commission Response

The commission declines to grant utilities sole discretion over what constitutes excess fiber capacity, as recommended by Joint Utilities. What may be considered excess fiber capacity is not a uniform standard but is based on the needs of the utility and the electrical grid, and therefore may vary depending on circumstance and with the limitations described under subsection (h). However, the commission agrees with TCA that the commission has the authority to determine whether a utility's plan properly characterizes fiber capacity as available fiber capacity.

The commission agrees that the term excess fiber capacity is frequently used in the rule and a definition is necessary for clarity. Accordingly, the commission defines excess fiber capacity as "fiber capacity neither utilized nor reserved for current or planned electric utility operations" under adopted paragraph (b)(5).

Proposed §25.218(c)(3) - Reasonable and nondiscriminatory terms and conditions

Proposed paragraph (c)(3) requires an electric utility to provide access to excess fiber capacity only on reasonable and nondiscriminatory terms and conditions that assure the electric utility the unimpaired ability to comply with and enforce all applicable federal and state requirements regarding the safety, reliability, and security of the electric delivery system.

TCA recommended that proposed paragraph (c)(3) "include a clarification that the electric utility may not hide discriminatory behavior from the commission." TCA expressed concern that an electric utility could indirectly discriminate against potential lessees of excess fiber capacity "by delaying timely make-ready on a pole attachment or exacting excessive concessions on other pole attachment negotiations in order to affect excess fiber lease negotiations." TCA highlighted that "pole attachments are a frequent point of contact between an internet service provider and an electric utility," and therefore such discrimination is not improbable. Accordingly, TCA provided draft language for paragraph (c)(3) which would prohibit a utility from discriminating against a lessee in business transactions unrelated to middle mile broadband service such as make-ready or pole attachment issues.

Joint Utilities generally opposed TCA's proposed recommendation to include in proposed paragraph (c)(3) additional language prohibiting indirect discrimination terms and conditions in a middle mile broadband lease as beyond the scope of the rulemaking and involving issues such as "pole attachments and make-ready" that are governed by the federal Pole Attachment Act (PAA). Joint Utilities further argued that TCA's proposed language would "potentially broaden the scope of an electric utility's non-discriminatory access obligation regarding pole attachments beyond what is statutorily mandated under Section 224(f) of the PAA" which "creates a non-discriminatory access obligation with respect to cable television systems and non-incumbent local exchange companies (non-ILECs)." Joint Utilities indicated that the federal non-discrimination requirement does not extend to broadband-only providers, including ISPs. Joint Utilities concluded that there is also "no statutory basis upon which to create such a requirement" in Chapter 43 or the Utilities Code as the "commission does not regulate pole attachments or make-ready obligations."

Commission Response

The commission agrees with Joint Utilities and declines to adopt TCA's proposed revision to paragraph (c)(3) regarding discrimination in other business transactions such as those involving pole attachment and "make-ready" issues, because the proposed revision is overly broad. This rulemaking is intended to address the provision of middle mile broadband service, and under the rule the utility must provide access to excess fiber capacity only on reasonable and nondiscriminatory terms and conditions, which prohibits the direct or indirect imposition of unreasonable or discriminatory terms and conditions for middle mile broadband service.

Proposed §25.218(d) - Charges

Proposed subsection (d) requires an electric utility that leases excess fiber capacity on its electric delivery system or other facilities to an internet service provider on a wholesale basis to charge the internet service provider for the use of the electric utility's system for all costs associated with that use. Proposed subsection (d) further requires that the rates and the terms and conditions of the lease be nondiscriminatory and prohibits an electric utility from leasing excess fiber capacity to provide middle mile broadband service to an affiliated internet service provider.

Joint Utilities and ETI recommended that proposed subsection (d) clarify that the costs associated with usage of an electric utility's systems for providing middle mile broadband service are those costs that are directly attributable to providing middle mile broadband service.

City of Houston opposed the change recommended by the Joint Utilities. City of Houston stated that the usage of the phrase "directly attributable to providing middle mile broadband service" is unclear and could be interpreted to exclude some costs such as administrative and general expenses and taxes.

Commission Response

The commission agrees with Joint Utilities and amends the rule accordingly. "Directly attributable costs" are substantively discussed under heading (f)(1)(M).

Proposed §25.218(e)(1) & (2) - Participation by electric utility

Proposed paragraph (e)(1) establishes that an electric utility may install and operate facilities to provide middle mile broadband service on any part of its electric delivery system or other facilities but may not construct new electric delivery facilities for the purpose of expanding middle mile broadband service. Proposed paragraph (e)(2) establishes that an electric utility may lease excess fiber capacity to internet service providers on a wholesale basis and may not provide internet service to customers on a retail basis.

Joint Utilities and ETI recommended that this paragraph clarify that any provision in the proposed rule is not intended to restrict an electric utility from owning, constructing, maintaining, or operating fiber optic cables or a broadband system for the electric utility's own use to support its delivery system operations or for other lawful purposes. It also does not affect an electric utility's ability to construct communications facilities at a requesting customer's cost or adding or expanding electric delivery facilities, including communication facilities, for electric delivery service purposes. Joint Utilities recommended adding new subparagraph (e)(1)(A) that states that "an electric utility may construct new electric delivery facilities, including communication facilities, to provide electric delivery service to customers and may use excess fiber capacity on new facilities to provide middle mile broadband service." TCA opposed Joint Utilities' proposed addition of new subparagraph (e)(1)(A) as that would enable electric utilities to construct communications facilities that are unrelated to delivery of electric service.

Commission Response

The commission agrees with TCA and declines to adopt Joint Utilities' recommendation for paragraph (e)(1) as the protections contemplated are already included in the rule under paragraph (c)(4) which states: "(n)othing in this section is intended to restrict an electric utility from owning, constructing, maintaining, or operating fiber optic cables or a broadband system for the electric utility's own use to support the operation of the electric utility's electric delivery system or for other lawful purposes." Similarly, subsection (h) emphasizes the primacy of the provision of electric service over middle mile broadband service.

PURA §43.101(a) states "(a)n electric utility may install and operate facilities to provide middle mile broadband service on any part of its electric delivery system or other facilities for internet service providers *but may not construct new electric delivery facilities for the purpose of expanding the electric utility's middle mile broadband service*. (emphasis added)" Paragraph (e)(1) directly incorporates this statutory language. An electric utility is not prohibited from constructing new facilities for the purpose of providing *electric service* or from providing middle mile broadband service using those facilities, once constructed.

Proposed §25.218(f) - Commission review of middle mile broadband plan

Proposed subsection (f) imposes filing requirements for a utility's plan for middle mile broadband service.

Joint Utilities and ETI recommended adding a confidentiality provision to subsection (f) based on previous language in §25.130(d)(6) (relating to Advanced Metering) and 22.142(c) (relating to Limitations on Discovery and Protective Orders) to read: "Competitively sensitive information contained in a utility's middle mile broadband plan may be filed confidentially in accordance with §22.142(c)."

Commission Response

The commission declines to adopt Joint Utilities' recommendation to add a confidentiality provision to the adopted rule as such provision is unnecessary. The confidentiality provisions of §22.142(c) and §22.71(d)(1) (relating to Filing of Pleadings, Documents, and Other Materials) allow for parties to file information confidentially. The presiding officer can make any additional determinations necessary regarding the confidentiality of competitively sensitive information.

Proposed §25.218(f)(1) - Filing requirements

Proposed paragraph (f)(1) includes the filing requirements for a written plan submitted by a utility for middle mile broadband service.

Cities opined that the proposed rule will effectively make participating electric utilities landlords to the ISP's leasing space on their infrastructure and expressed concern that there are no required protections for utility ratepayers if an ISP breaches the lease or otherwise defaults. Cities stated that in a scenario where funds are not delivered and/or the lease is breached, the electric utility could potentially continue to collect money from ratepayers without receiving revenues to credit ratepayers for the associated costs as required by statute. Therefore, Cities proposed, as part of the filing requirements under proposed paragraph (f)(1), the rule include a demonstration that the electric utility has (1) a guarantee of funds to be received from the lessor for the entire lease term or some defined part of the lease term and (2) the financial capability to offset all construction, maintenance, operations and other costs, and all return associated with the service in the event of a breach, default, or other failure by the lessor to pay the contracted revenues through the end of the lease term. Cities stated that these additional requirements will protect ratepayers from subsidizing the provision of middle mile broadband service as specifically required in the statute.

OPUC supported Cities' proposals to add additional subparagraphs to proposed paragraph (f)(1) providing additional cus-

tomer protections for electric utility ratepayers in case an ISP breaches the lease or defaults. OPUC noted that the cost recovery mechanism under proposed subsection (d) and the customer credit provision under proposed paragraph (g)(2) do not sufficiently mitigate the risk for ratepayers in case of an ISP breach or default on a middle mile broadband lease. OPUC commented that subsection (d) implies consumers will be made whole through charges to the internet service provider. In this context, OPUC supported Cities' position under heading (f)(1) that the electric utility demonstrate that it has a guarantee of funds from the ISP for the entire lease term or some defined part of the lease term; and also demonstrate that it has the financial capability to offset all construction, maintenance, operations, and other costs and all return associated with the middle mile broadband service if all costs associated with the service are not recovered from the ISP.

City of Houston agreed with Cities' recommendation for rule language protecting ratepayers in case an ISP defaults on a lease with the electric utility as new facilities installed to connect an ISP to the utility's fiber system could be at risk in such a scenario. Specifically, City of Houston recommended the proposed rule require an ISP to pay a Contribution In Aid of Construction (CIAC) for any interconnection costs. Alternatively, City of Houston recommended the rule include language prohibiting a utility from recovering from ratepayers any unrecovered costs due to an ISP default.

CenturyLink supported Cities' proposals to add additional subparagraphs to proposed paragraph (f)(1) providing additional customer protections for electric utility ratepayers in case an ISP breaches the lease or defaults. CenturyLink asserted ratepayers, as "captive" customers of a utility, should not be required to fund costs associated with middle mile broadband service as they may not be the same customers benefiting from the provision of such service. CenturyLink also stated that diversion of any money from the regulated service of electricity to the non-regulated service of middle mile broadband may diminish the quality of electricity provided to ratepayers. Specifically, CenturyLink maintained "it is counter to fair market practices to have captive ratepayers of a regulated service supporting the cost of an unregulated service, especially where potential competitive free market participants exist and offer the same product without a regulated customer base." CenturyLink urged the commission to ensure that electric utilities are not permitted a competitive advantage through utilizing their regulated customer base for provision of middle mile broadband service as it is foreseeable a competitor may not have a ratepayer customer base to insure its investment in provisioning middle mile broadband.

Joint Utilities stated that the proposals of Cities are onerous and unnecessary. Joint Utilities noted that middle mile broadband service will be based on unused strands in fiber bundles installed to support electric delivery service, so capital and operations costs for those fiber facilities are a part of the utility's cost of service, and only incremental costs of the middle mile broadband program will be directly attributable to that program. Joint Utilities pointed out that obtaining an up-front guarantee of lease payments from the ISP, as Cities suggest, would be onerous and potentially hinder provision of service in unserved and underserved areas. Joint Utilities argued that if an ISP defaults on lease payments, the utility will have available legal and contractual remedies, including entering into a new lease.

Commission Response

The commission agrees with Cities, OPUC, City of Houston, and CenturyLink that the proposed rule should include additional protections for ratepayers in case a utility is unable to recoup costs associated with middle mile broadband service. It is foreseeable that an ISP may breach a middle mile broadband lease and that a utility may have unrecouped costs associated with its plan. In such an event, there is a risk that the demonstration of revenues required under subparagraph (f)(1)(M) will no longer account for all costs associated with the provision of middle mile broadband service and, as proposed, subsection (g) does not provide for this circumstance. The commission declines to adopt Cities' recommendation as paragraph (g)(3) accomplishes the same purpose. However, the commission adopts new paragraph (g)(4) which stipulates that, in the event revenues received by an electric utility from an ISP for the use of middle mile broadband service are insufficient to offset the costs of such service, the utility must ensure that its regulated rates prevent ratepayer cross-subsidization. The commission agrees with CenturyLink that increasing costs on ratepayers due to issues related to middle mile broadband is unfair to "captive" ratepayers. However, the commission agrees with Joint Utilities that requiring a utility to file up-front guarantees of payment or a demonstration of financial capability for an ISP is counterproductive to the implementation of middle mile broadband service. The commission also agrees with Joint Utilities that a utility may contract for remedies for any breach of the lease or default by an ISP.

The commission disagrees with City of Houston and declines to add a rule provision requiring an ISP to pay a CIAC. The adopted language under new paragraph (g)(4) discussed above substantively addresses City of Houston's concerns about unrecouped costs. A utility offering middle mile broadband service has the discretion to require a CIAC and other terms and conditions to reduce the risk of unrecovered cost.

Texas 2036 pointed out that one of the many challenges for households accessing broadband services is the cost. Texas 2036 proposed adding new subparagraph (f)(1)(O) which would require a utility to indicate whether the ISP will offer low-cost broadband service to the unserved or underserved area and new subparagraph (f)(1)(P) which would require a utility to indicate whether it participates in the FCC Affordable Connectivity Program. Texas 2036 commented that collecting this data will help inform public policy and improve transparency in the broadband industry.

TCA opposed Texas 2036's recommendation as beyond the scope of PURA Chapter 43 and this rulemaking.

Commission Response

The commission declines to adopt Texas 2036's recommendations for new subparagraphs (f)(1)(O) and (f)(1)(P) as collecting information to inform future public policy is beyond the scope of this rulemaking. Furthermore, whether an ISP is participating in certain FCC programs or is offering service at a particular price point should not be dispositive of the adequacy of the electric utility's plan, nor are either of these criteria included in PURA §43.102(a).

Proposed §25.218(f)(1)(A) - Demonstration of unserved and underserved areas

Proposed subparagraph (f)(1)(A) requires an electric utility to include in its submitted written middle mile broadband plan a demonstration that the middle mile broadband service will be used only for unserved and underserved areas.

As stated under the Question 1 heading, BDO recommended middle mile broadband plans submitted to the commission be validated for accuracy by the utility via reference to the BDO and FCC maps. ETI commented that the use of the term "only" in subparagraph (f)(1)(A) conflicts with the language in paragraph (c)(1) which allows the utility to provide middle mile broadband "primarily" in unserved and underserved areas.

Commission Response

As discussed under the Question 1 heading, the commission agrees with BDO's recommendation and revises subparagraph (f)(1)(A) to indicate that the required demonstration should be evidenced by reference to the BDO and FCC maps, to the extent those maps are available and accurate, and any other necessary information.

The commission agrees with ETI's comment and notes that its concern has already been addressed, as the commission has replaced the phrase "primarily for" with the statutory term "in" under paragraph (c)(1), as discussed under that subheading.

Proposed §25.218(f)(1)(B) - Sworn statement of cybersecurity expert

Proposed subparagraph (f)(1)(B) requires an electric utility to include in its submitted written middle mile broadband plan a sworn statement by a cybersecurity expert attesting that cybersecurity has been properly addressed for implementing and providing middle mile broadband service.

Joint Utilities and ETI recommended that (f)(1)(B) be clarified to provide that the sworn statement required from a cybersecurity expert relates to the security of the electric utility's system, not other systems such as the ISP.

Commission Response

The commission adopts Joint Utilities and ETI's recommendation to clarify that the sworn statement from the cybersecurity expert attests to only the security of the electric utility's system. The commission recognizes that, in submitting a middle mile broadband plan, the relevant cybersecurity inquiry relates to access to the electric utility's electric infrastructure, rather than the ISP's service. Therefore, the commission adds language to adopted subparagraph (f)(1)(B) specifying the sworn statement relates only to the electric utility's cybersecurity and requiring an electric utility to provide the expert's resume or curriculum vitae and describe the expert's cybersecurity expertise.

Proposed §25.218(f)(1)(G) - Estimated cost

Proposed subparagraph (f)(1)(G) requires an electric utility to include in its submitted written middle mile broadband plan the estimated cost of the project, including an itemization of engineering costs, construction costs, permitting costs, right-of-way costs, a reasonable allowance for funds used during construction, and all other costs associated with the lease and use of the electric utility's system for middle mile broadband service by ISPs.

TCA proposed that notice of estimated fees to internet service providers be included in the electric utility's application to allow the commission to determine whether the pricing indicated a possible prohibited cross-subsidization is occurring, and to ensure the rates are indeed recovering the costs as mandated by statute.

CenturyLink supported TCA's recommended changes for proposed subparagraph (f)(1)(G) as it would provide the commission with additional information to determine upfront whether the pricing "indicates a possible prohibited cross-subsidization by the electric utility."

Joint Utilities opposed TCA's proposal as unnecessary since the utility will already be required to provide a copy of the lease that will provide sufficient detail about the fees agreed upon between the utility and the ISP.

Commission Response

The commission declines to adopt TCA's recommendation to require an electric utility to disclose fees charged to the ISP as part of its middle mile broadband plan under subparagraph (f)(1)(G). The commission agrees with Joint Utilities that information contained in the lease agreement filed by the utility should include adequate and thorough details about fee arrangements between the utility and the ISP. To the extent the utility's initial filing warrants additional review and requires more detailed information, stakeholders may use the discovery process. Additionally, as a practical matter, evaluating potential instances of cross-subsidization would be beyond the scope of the commission's review of a utility's middle mile broadband plan. A definitive determination regarding the occurrence of any cross-subsidization can be made only in a comprehensive base-rate proceeding in which the entirety of an electric utility's costs is subject to review. However, as discussed under heading (g), the commission has added paragraph (g)(4) which prohibits cross-subsidization from ratepayers which addresses CenturyLink's concern.

Proposed §25.218(f)(1)(M) - Demonstration of revenue-cost offset

Proposed subparagraph (f)(1)(M) requires an electric utility to include in its submitted written middle mile broadband plan a demonstration that the revenues received from the provision of middle mile broadband service under the plan offset all construction, maintenance, operations, and other costs and all return associated with the service.

Joint Utilities and ETI recommended that (f)(1)(M) clarify that revenues from middle mile broadband service offset costs that are directly attributable to that service. Joint Utilities commented that because the middle mile program will be based on unused dark fiber capacity on facilities installed for electric delivery purposes, the middle mile broadband cost should only be the incremental costs directly attributable to that program such as costs of facilities to allow ISPs to interconnect with utility fiber (to the extent such costs are not paid by the ISPs) as well as program costs associated with implementing and operating the middle mile broadband program. Joint Utilities opined that capital and operation and maintenance costs related to fiber installed and used for utility purposes would not be attributable to the middle mile broadband program. Accordingly, Joint Utilities provided draft language inserting the term "directly attributable" into subparagraph (f)(1)(M).

Consistent with its comments under heading (d), City of Houston expressed concern that the Joint Utility proposal, specifically the use of the phrase, "directly attributable" could exclude some costs. City of Houston stated that the phrase "is not clear and could be interpreted to exclude some costs such as administrative and general (A&G) expenses and taxes."

Commission Response

The commission agrees with Joint Utilities and ETI and modifies the rule consistent with the proposed language. The costs associated with middle mile broadband implementation should

only be the incremental costs directly attributable to that program, such as costs of facilities to allow ISPs to interconnect with utility fiber (to the extent such costs are not paid by the ISPs) as well as program costs associated with implementing and operating the middle mile broadband program. Consistent with PURA §43.001(d), the intent of the rule is to encourage the deployment of middle mile broadband service in unserved and underserved areas while not increasing costs to electric customers because of the middle mile broadband service. Assigning costs to broadband service that are not directly attributable to that service would increase the complexity of identifying and recovering the costs by a utility and create a risk of under-recovery that would not be determined until a subsequent base rate case, which could unreasonably deter utilities from offering the service.

City of Houston's concerns are mitigated by the fact that in the utility's base rate case a utility will be required to provide information necessary to support a determination under subsection (g) that electric customers will not pay for costs to provide middle mile broadband service.

Proposed §25.218(f)(2) - Notice and intervention deadline

Proposed paragraph (f)(2) requires a utility filing a plan to issue notice on or before the day after it files its plan and must include in the notice the docket number for the new proceeding and states that failure of a utility to provide timely notice will toll the intervention deadline under proposed subparagraph (f)(2)(C).

OPUC requested that as the statutory representative for residential and small commercial consumers, it be notified when a utility provides notice of its filing of a middle mile broadband plan. OPUC proposed new subparagraph (f)(2)(C) which would require a utility to issue notice of applications to OPUC via first class mail in the unlikely event that OPUC was not a party to an electric utility's most recent base rate case.

Commission Response

The commission agrees with OPUC that OPUC should receive notice of a utility's middle mile broadband plan and amends the rule accordingly.

TCA proposed adding an alternative new subparagraph (f)(2)(C) which would require a utility to issue notice applications to internet service providers who offer broadband service within the proposed project area or immediately adjacent area.

Joint Utilities opposed TCA's recommendation for proposed subparagraph (f)(2)(C), because Joint Utilities are not aware of an established database for identifying ISP service areas (such as tax rolls for identifying property owners for Certificate of Convenience and Necessity notices), nor has TCA defined "immediately adjacent area" which is therefore unclear. Joint Utilities proposed as an alternative that the rule require additional notice by publication in the *Texas Register*.

TCA also proposed adding new subparagraph (f)(2)(F) to permit an ISP or telecommunications provider to intervene in any proceeding under this section under certain conditions and provided draft language for the same.

CenturyLink supported TCA's recommendation to add new subparagraphs (f)(2)(C) and (f)(2)(F) providing notice of and the opportunity to intervene in middle mile broadband applications to ISPs offering broadband service within or immediately adjacent to the proposed project area based on a showing or commitment to providing 100/20 broadband service. CenturyLink stated that ISPs, as "active participants in the competitive broadband market," should be entitled to such notice and intervention rights in order to supplement the commission's efforts in gathering information and efficiently providing middle mile broadband service to "unserved" and "underserved" areas of Texas. CenturyLink concluded that TCA's proposed additions would assist the commission in "discouraging overbuilding, preventing waste of resources, and supporting the competitive market."

Joint Utilities opposed TCA's recommendation allowing ISPs and telecommunications providers the right to intervene in an electric utility's middle mile broadband proceeding based on the standards TCA laid out. Joint Utilities argued that the law of standing and justiciable interest is well-developed and provides appropriate standards for evaluating interventions. Joint Utilities noted that the standard has been successfully applied in commission proceedings for decades and that the commission should continue to follow that law and should not include special provisions in the rule for ISP interventions.

TCA also proposed new language for proposed subparagraph (f)(2)(G) which would permit an ISP to protest a middle mile broadband project on the same basis as an affected property owner.

Commission Response

The commission declines to adopt TCA's recommendation to add new subparagraphs (f)(2)(C) and (f)(2)(G) concerning intervention and protest rights of an ISP. The commission agrees with Joint Utilities that notice provisions should avoid ambiguity and that identifying ISPs providing service adjacent to unserved and underserve areas would be difficult.

However, the commission acknowledges that general publication of notice without burdening an electric utility is necessary to reach other entities that may have an interest in the proceeding. Therefore, the commission adopts rule language creating a generic project for notice to parties that do not receive notice under subparagraphs (f)(2)(A)-(C). This is consistent with the intent of Joint Utilities' proposal for notice via *Texas Register* but provides notice in a static location that is more easily accessed and located, is exclusive for middle mile broadband plan review, and does not place the burden on commission staff of publishing notice in the *Texas Register* each time an application is filed under the rule. The commission substantively discusses notice under heading (f)(2)(A).

The commission declines to adopt TCA's proposed new subparagraph (f)(2)(G) granting ISPs intervenor status in middle mile broadband proceedings. Under procedural rule §22.103(b)(2) (relating to Standing to Intervene), "a person has standing to intervene if that person"¦has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding." (Emphasis added) The commission recognizes that the parties previously listed, such as a competitor ISP or a local government, may have a justiciable interest in a commission review of an electric utility's middle mile broadband plan. Therefore, an entity with a justiciable interest may submit a motion to intervene under §22.103(b) and §22.104 (relating to Motions to Intervene). The presiding officer will determine whether the entity has standing to intervene.

The commission declines to grant ISPs the authority to protest a middle mile broadband application as requested by TCA. PURA is specific as to which entities have this authority and the commission declines to provide access to rights exclusively provided to affected property owners by statute.

The commission revises paragraph (f)(2) to require a utility to file proof of notice in the docket within 10 days of the date service of notice is completed, specifying the entities the electric utility considers to be affected property owners.

Proposed §25.218(f)(2)(A) - Notice to affected property owners

Proposed subparagraph (f)(2)(A) includes the form and manner requirements for notice issued to "affected property owners" of a middle mile broadband plan.

Joint Utilities and ETI suggested a new clause (f)(2)(A)(ii) to include in the notice to affected property owners of the utility's intent to use the easement or other property right for the provision of middle mile broadband service and provided draft language for the same. Joint Utilities and ETI also proposed new clause (f)(2)(A)(iv) which includes a draft form for issuing notice to affected property owners.

OPUC supported the recommendation of Joint Utilities for notice to be provided to affected property owners of the intent to use an existing easement for middle mile broadband implementation under proposed subparagraph (f)(2)(A). OPUC noted that middle mile broadband implementation may require additional construction and usage of easements by the electric utility and therefore landowners burdened by such easements should be made aware of that possibility through the additional proposed notice.

Cities emphasized that municipal and county governments should receive appropriate notice of middle mile broadband plans impacting their public rights-of-way. Cities argued that Joint Utilities' proposals for notice excludes local and state government bodies that own public rights of way from the definition of "affected property owner." Cities pointed out that while the utilities referred to "statutory provisions" for its exclusion of state and local government bodies, "affected property owner" is not defined under PURA, the Texas Water Code, or Local Government Code. Cities stated that utilities rely on provisions that address whether a city can recover or charge a fee for the installation of middle mile broadband services for unserved and underserved areas. Cities stated that while these may be informative excerpts from the underlying statute, they are not relevant to the question of whether a city should receive notice when its rights-of-way may be impacted by installation of middle mile broadband services. Cities argued that as stewards of safety and accessibility within its jurisdiction, cities and municipalities should receive notice when any installation or project will impact public rights-of-way. Cities proposed striking the phrase "to affected property owners" in subparagraph (f)(2)(A) to change the section into a general notice provision.

Commission Response

The commission declines to implement forms for notice as proposed by Joint Utilities but may address such a requirement in a later proceeding. However, the commission revises adopted subparagraph (f)(2)(A) to require specific information to be included in the notice to affected property owners, including a notice of intent to use the utility's easement for middle mile broadband implementation.

The commission agrees with Cities that local governments should receive notice of middle mile broadband proceedings. Adopted subparagraph (f)(2)(B) lists the parties that must be sent notice by first class mail that are not affected property owners, including municipalities crossed by or within five miles of the planned project and counties that are crossed by the planned project.

Furthermore, adopted subparagraph (f)(2)(D) indicates that filing notice in the middle mile broadband plan Interchange project serves as notice to all other interested parties. Any interested party may subscribe to the generic Interchange project designated for the filing of notice of middle mile broadband plans. Lastly, the commission adopted subparagraph (f)(2)(E) to reflect the intervention deadline in relation to the other specified changes and to indicate that failure to intervene does not preclude an affected property owner from invoking the right to protest under adopted subparagraph (f)(2)(F).

The definition of "affected property owner" is discussed under heading (b)(1). Notice and intervention are also substantially discussed under heading (f)(2).

Proposed §25.218(f)(2)(B) - Notice to ratepayers

Proposed subparagraph (f)(2)(B) includes the form and manner requirements for notice issued to all parties in the electric utility's last comprehensive base-rate proceeding of a middle mile broadband plan.

Joint Utilities and ETI proposed a similar form notice as each recommended in subparagraph (f)(2)(A) and provided recommended language.

Commission Response

The commission declines to implement forms for such notice as proposed by Joint Utilities but may address such a requirement in a later proceeding.

Proposed §25.218(f)(2)(D) - Written protest by affected property owner

Proposed subparagraph (f)(2)(D) states that an affected property owner may invoke the right to protest the middle mile broadband plan not later than the 60th day after the date an electric utility mails notice to potential intervenors.

TCA recommended that subparagraph (f)(2)(D) should also include full notice to affected parties including newly affected internet service providers.

Commission Response

The commission declines to revise proposed subparagraph (f)(2)(D), adopted as subparagraph (f)(2)(F), per TCA's recommendation. An electric utility is not required to send ISPs first class mail notice under the adopted rule. Under adopted subparagraph (f)(2)(D) all interested persons will receive notice through the generic project established for the exclusive purpose of providing notice of middle mile broadband plans. A person or entity may subscribe to the project and receive automatic e-mail notifications of filings relating to submitted middle mile broadband plans.

Proposed §25.218(f)(3) - Commission processing of middle mile broadband plan

Proposed §25.218(f)(3) provides the requirements for the commission's processing of middle mile broadband plans.

Texas 2036 recommended the commission coordinate with BDO when reviewing middle-mile broadband plans submitted by electric utilities under proposed paragraph (f)(3). Specifically, Texas 2036 recommended adding a requirement that the Commission inform BDO of the electric utility's middle mile broadband plan since that office is charged with serving as a resource for infor-

mation on broadband service and digital connectivity in Texas. Texas 2036 recommended the commission add new subparagraph (f)(3)(A) which would require the commission to inform the BDO of the middle mile broadband plan no later than 10 days from the date the commission receives the plan.

TCA opposed Texas 2036's recommendation as beyond the scope of PURA Chapter 43 and this rulemaking.

TCA proposed that updates or amendments to the application should include notice to affected parties including newly affected ISPs. Accordingly, TCA recommended adding "including without limitation additional notice to affected property owners and ISPs" to the end of proposed paragraph (f)(3).

Commission Response

The commission declines to adopt Texas 2036's proposal to revise subparagraph (f)(2)(A) and TCA's proposal to revise subparagraph (f)(3)(D) for the reasons discussed under heading (f)(2)(B). Specifically, the generic project used for general notice of middle mile broadband plans will be used to file notices of amendments or updates associated with submitted middle mile broadband plans.

Proposed §25.218(g) - Cost recovery

Proposed subsection (g) lists the provisions governing cost recovery for deployment of middle mile broadband facilities.

Cities commented that unless the lease term lasts as long as the expected life of the asset, there exists a possibility that the participating electric utility could collect money from ratepayers for the provision of middle mile broadband service without the offsetting revenue credit from the lease. Cities pointed out that HB 3853 did not intend for electric ratepayers to backstop the provision of middle mile broadband service and opined that the rule should ensure that electric customers are not paying for the associated costs without the offsetting credit. Therefore, Cities recommended, the rule should require an incentive for the electric utility to either (1) recover all cost and returns associated with the provision of service upfront or throughout the initial lease term or (2) create incentives for the utility to sign a new lease to cover the costs for the remainder of the life of the asset.

OPUC expressed that proposed paragraph (e)(1) allows an electric utility to expand its infrastructure as necessary to accommodate middle mile broadband service. OPUC opined that in this limited scenario, where infrastructure is installed for the sole purpose of effectuating middle mile broadband service, the upfront costs should be entirely borne by the electric utility, as this infrastructure is not used or useful in providing electric service to its ratepayers. OPUC noted that as with ratepayers eventually being repaid via credit, the electric utility would presumably be made whole through charges to the internet service providers. Therefore, OPUC requested new paragraph (g)(3) which would prohibit an electric utility from including in its invested capital costs associated with facilities solely used to provide middle mile broadband service.

TCA opposed OPUC's interpretation that electric utilities would be allowed to build out communications facilities unrelated to leasing excess fiber capacity. Joint Utilities commented that OPUC's proposal misunderstands the rate treatment for middle mile broadband established in PURA §43.103. Joint Utilities opined that reasonable and necessary investment and expenses to provide middle mile broadband services are eligible for inclusion in a rate proceeding under Chapter 36, but that any revenue received from an ISP must be applied as a revenue credit to customers in a rate proceeding. As a result, costs related to middle mile broadband service are includable for recovery in rates, but utilities do not retain the benefit of the lease revenues, all of which are credited to customers.

Joint Utilities stated that, as discussed under heading (d) and (f)(1)(M), the fiber cable being used for middle mile broadband service is installed and maintained for utility purposes and only incremental costs of the middle mile broadband program will be directly attributable to that program. Under the statute, the costs are recovered through rates, not through lease revenues. As noted in Joint Utilities' initial comments, the proposed rule should incorporate additional protection by requiring that the lease revenues cover the incremental costs directly attributable to the middle mile service.

Commission Response

The commission declines to modify the rule as proposed by Cities. However, Cities' concerns about insufficient cost recovery from ISPs are addressed by adopted paragraph (g)(4) which prohibits cross subsidization and is discussed in greater detail below. Additionally, the commission can disallow the shortfall in the utility's base-rate proceeding.

Regarding OPUC's proposed additional language, PURA § 43.103(a) states that "(w)here an electric utility installs facilities used to provide middle mile broadband service under Section 43.051, the electric utility's investment in those facilities is eligible for inclusion in the electric utility's invested capital, and any fees or operating expenses that are reasonable and necessary are eligible for inclusion as operating expenses for purposes of any proceeding under Chapter 36." The plain wording of this language indicates that the facilities used to provide middle mile broadband services are eligible for inclusion in the electric utility's invested capital; OPUC's proposed language, however, would specify that certain parts of the infrastructure are not eligible, thus directly contradicting the clear statutory wording. The commission retains the language as published.

Proposed §25.218(g)(1) - Costs eligible for recovery

Proposed paragraph (g)(1) states that a utility's investment in facilities used to provide middle mile broadband service is eligible for inclusion in the electric utility's invested capital and that any fees or operating expenses that are reasonable and necessary are eligible for inclusion as operating expenses for purposes of any proceeding under PURA Chapter 36.

As stated under heading (g), Joint Utilities and ETI commented that under PURA §43.103 the utility's investment in facilities used for the middle mile broadband service may be included in its invested capital and any fees or operating expenses that are reasonable and necessary are eligible for inclusion as operating expenses for purposes of any proceeding under PURA Chapter 36. Joint Utilities and ETI opined that the investment and costs for the middle mile broadband project will be reviewed in the utility's middle mile broadband plan. Joint Utilities and ETI also commented that the commission's review of the application should be given some weight when an electric utility comes in for a rate case and requests inclusion of the approved plan's costs in the electric utility's cost of service. Therefore, Joint Utilities and ETI recommended that a provision be added to the end of paragraph (g)(1) similar to language included in §25.130 (relating to Advanced Metering) such as "costs spent in accordance with the plan or amended plan approved by the commission are presumed to be reasonable and necessary and investment made

in accordance with the plan or amended plan approved by the commission is presumed to be prudent."

City of Houston and Cities disagreed with Joint Utilities, noting that the proposed rule states that only reasonable and necessary expenses may be eligible for inclusion in the electric utility's future rate proceeding. City of Houston and Cities concluded that expenses incurred for an approved middle mile broadband plan should be subject to review so that parties can determine if the costs were reasonable. Cities pointed out that an integral aspect of rate proceedings is ensuring a utility's incurred expenses for costs of service are reasonable and necessary, and expenses incurred for the implementation of middle mile broadband service should not be exempt from this principle. City of Houston and Cities argued that the proposed revision would eliminate this review.

OPUC also recommended the Joint Utilities' recommendation for proposed paragraph (g)(1) be rejected. OPUC noted that base rate proceedings investigate the finances and prudence of decision making by a utility. In contrast, OPUC noted, the term "prudence" is not found in the proposed rule. Therefore, OPUC opined that it would be inappropriate to make an automatic assumption of prudence for costs approved in a proceeding that does not expressly consider prudence within its parameters. OPUC concluded that these costs should be fully considered, vetted, and litigated in a base rate proceeding without any additional weight given to the initial costs approved in the middle mile broadband plan application.

CenturyLink opposed Joint Utilities recommendations for proposed paragraph (g)(1) as the change would "circumvent statutory safeguards, avoid providing the basic requirements, and sidestep the requisite burden of proof in their electric base rate cases." CenturyLink noted that PURA §43.102 uses the term "eligible" when referring to costs that could be included as invested capital or operating expenses in a base rate proceeding and that the term clearly intends for middle mile broadband costs to undergo the same "reasonable, necessary, and prudent" review as any other cost in a base rate proceeding. CenturyLink maintained that the thorough examination of ratepayer costs performed by the commission in a utility's base rate case should not be circumvented by an alternative proceeding such as commission review of a middle mile broadband application.

Commission Response

The commission disagrees with the Joint Utilities' comments regarding the inclusion in the rule of a presumption of reasonableness for a utility's costs related to its plans for middle mile broadband service and a presumption of prudence for investment made in accordance with the plan. Cost recovery is addressed in PURA §43.103, which states that reasonable and necessary expenses are eligible for inclusion in a utility's future rate proceeding and that the commission may allow an electric utility to recover its investment and associated costs in middle mile broadband service.

The commission agrees with the comments of the City of Houston, Cities, OPUC, and CenturyLink that a utility's base rate case proceeding is the appropriate vehicle for the commission's consideration of these issues.

Proposed §25.218(g)(2)- Revenue credit to customers

Proposed paragraph (g)(2) requires revenue received by an electric utility from an internet service provider for the use of middle mile broadband service to be applied as a revenue credit to customers in proportion to the customers' funding of the underlying infrastructure in a proceeding under PURA Chapter 36.

Joint Utilities and ETI noted that in the proposed rule, the revenue that the electric utility receives from the ISP for the middle mile service must be applied as a revenue credit to customers in proportion to the customer's funding of the underlying infrastructure. They pointed out that in the context of a base rate case, such revenue credits or offsets are typically applied to "customer classes" or "rate classes" to ensure proper allocation of the offset. Joint Utilities opined that use of the term "customer" by itself could lead to disputes as to what/who constitutes the "customer" to receive the revenue credit and recommended adding a sentence to paragraph (g)(2) stating "For purposes of this section, the term 'customers' means 'rate classes.'"

Commission Response

The commission agrees with the Joint Utilities' comments and modifies the rule accordingly.

The new rule is adopted under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Section 3 of HB 3853 requiring the commission to adopt rules necessary to implement the middle mile broadband requirements imposed by amended Chapter 43 of PURA within 270 days of adoption of HB 3853. The new rule is also adopted under PURA §43.102(b), which requires the commission to approve a middle mile broadband plan that meets the requirements of PURA §43.102(a) and commission rules.

Cross Reference to Statute: Public Utility Regulatory Act §14.001, 14.002 and Chapter 43.

§25.218. Middle Mile Broadband Service.

(a) Purpose and application. This section implements Public Utility Regulatory Act (PURA) Chapter 43, permitting an electric utility to implement middle mile broadband service for excess fiber capacity. This section applies to an electric utility, including a transmission and distribution utility, regardless of whether the utility is offering customer choice under PURA Chapter 39.

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

(1) Affected property owner--an owner of real property that is burdened by an easement or other property right owned or leased by an electric utility that will be affected by the installation or operation of middle mile broadband service on an electric delivery system or other facilities of the electric utility. A state or local government body that owns a public right of way and a property owner whose real property is burdened by an existing easement or other property right that permits the provision of third-party middle mile broadband service on an electric utility delivery system are not affected property owners.

(2) Affiliated internet service provider--an internet service provider that is an affiliate of the electric utility that provides or intends to provide a plan for middle mile broadband service under this section.

(3) Broadband service--retail internet service provided by a commercial internet service provider with the capability of providing a download speed of at least 25 megabits per second and an upload speed of at least 3 megabits per second.

(4) Electric delivery system--the power lines and related transmission and distribution facilities constructed to deliver electric energy to the electric utility's customers.

(5) Excess fiber capacity--fiber capacity neither utilized nor reserved for current or planned electric utility operations.

(6) Internet service provider--a commercial entity that provides internet services to end-user customers on a retail basis.

(7) Middle mile broadband service--the provision of excess fiber capacity on an electric utility's electric delivery system or other facilities to an internet service provider to provide broadband service. The term does not include provision of internet service to end-use customers on a retail basis.

(8) Underserved area--means one or more census blocks that are not an unserved area and in which 80 percent or more of end-user addresses in each census block either lack access to broadband service with a download speed not less than 100 megabits per second and an upload speed not less than 20 megabits per second, or lack access to reliable broadband service with those speeds as determined using Federal Communications Commission mapping criteria, if available.

(9) Unserved area--means one or more census blocks, in which 80 percent or more of the end-user addresses in each census block either have no access to broadband service, or lack access to reliable broadband service as determined using Federal Communications Commission mapping criteria, if available.

(c) Authorization for middle mile broadband service.

(1) An electric utility may own, construct, maintain, and operate fiber optic cables and other facilities for providing middle mile broadband service to an internet service provider for the purpose of providing broadband service in unserved and underserved areas consistent with the requirements of this section. The electric utility has the right to decide, in its sole discretion, whether to implement middle mile broadband service and may not be penalized for deciding to implement or not to implement that service.

(2) An electric utility that elects to provide middle mile broadband service must determine on a nondiscriminatory basis which internet service providers may access excess fiber capacity on the electric utility's electric delivery system or other facilities and provide access points to allow connection between the electric utility's electric delivery system or other facilities and the systems of those internet service providers. An electric utility is prohibited from leasing excess fiber capacity to provide middle mile broadband service to an affiliated internet service provider.

(3) The electric utility must provide access to excess fiber capacity only on reasonable and nondiscriminatory terms and conditions that assure the electric utility the unimpaired ability to comply with and enforce all applicable federal and state requirements regarding the safety, reliability, and security of the electric delivery system.

(4) Nothing in this section is intended to restrict an electric utility from owning, constructing, maintaining, or operating fiber optic cables or a broadband system for the electric utility's own use to support the operation of the electric utility's electric delivery system or for other lawful purposes.

(d) Charges. An electric utility that owns and operates facilities to provide middle mile broadband service may lease excess fiber capacity on the electric utility's electric delivery system or other facilities to an internet service provider on a wholesale basis and must charge the internet service provider for the use of the electric utility's system for all costs directly attributable to providing middle mile broadband service. The rates, terms, and conditions of a lease of excess fiber capacity described by this section must be nondiscriminatory. An electric utility may not lease excess fiber capacity to provide middle mile broadband service to an affiliated internet service provider.

(e) Participation by electric utility.

(1) An electric utility may install and operate facilities to provide middle mile broadband service on any part of its electric delivery system or other facilities for internet service providers but may not construct new electric delivery facilities for the purpose of expanding the electric utility's middle mile broadband service.

(2) An electric utility that owns and operates middle mile broadband service:

(A) may lease excess fiber capacity on the electric utility's electric delivery system or other facilities to an internet service provider on a wholesale basis; and

(B) may not provide internet service to end-use customers on a retail basis.

(f) Commission review of electric utility middle mile broadband service plan.

(1) Filing requirements. An electric utility that plans to deploy middle mile broadband service must submit to the commission a written plan that includes:

(A) a demonstration that the middle mile broadband service will be used only for unserved and underserved areas based on a broadband availability map developed by the Broadband Development Office or Federal Communications Commission, to the extent that such a broadband availability map is available, accurate, and developed using criteria reasonably consistent with this section; in the absence of an appropriate map, an electric utility may demonstrate that an area is unserved or underserved using other available and necessary information;

(B) a sworn statement by a cybersecurity expert attesting that the electric utility's cybersecurity has been properly addressed for implementing and providing middle mile broadband service, a copy of the cybersecurity expert's resume or curriculum vitae, and a description of the expert's cybersecurity expertise;

(C) the route of the middle mile broadband service infrastructure proposed for the project;

(D) the location of the electric utility's infrastructure that will be used in connection with the project;

(E) an estimate of potential unserved or underserved broadband customers that would be served by the internet service provider;

(F) the capacity, number of fiber strands, and any other facilities of the middle mile broadband service that will be available to lease to internet service providers;

(G) the estimated cost of the project, including an itemization of engineering costs, construction costs, permitting costs, right-of-way costs, a reasonable allowance for funds used during construction, and all other costs associated with the lease and use of the electric utility's system for middle mile broadband service by internet service providers;

(H) the proposed schedule of construction for the project;

(I) a copy of the lease with the internet service provider for middle mile broadband service and a statement attesting that the lease is in compliance with subsections (c)(2) and (3), and subsection (d) of this section;

(J) a copy of the final order and the docket number for the electric utility's last comprehensive base-rate case proceeding;

(K) a disclosure of all state and federal funds, including but not limited to, subsidies, grants, and tax benefits, credits, or deductions, utilized by the electric utility and internet service provider in association with the provision of middle mile broadband service;

(L) a demonstration that the revenues received from the provision of middle mile broadband service under the plan offset all costs directly attributable to the middle mile broadband service, including but not limited to, construction, maintenance, operations, taxes, other costs, and return;

(M) testimony, exhibits, and other evidence that demonstrate the project will allow for the provision and maintenance of middle mile broadband service to unserved and underserved areas with a sworn statement attesting compliance with subsection (e) of this section;

(N) unless otherwise specified, testimony, exhibits, or other evidence that fully support the information required by subparagraphs (A) - (M) of this paragraph; and

(O) any other information that the applicant considers relevant.

(2) Notice and intervention deadline. On or before the day after an electric utility files its plan, the electric utility must provide notice in accordance with this paragraph. The notice must include the docket number assigned to the electric utility's filed written plan. Within 10 days of the date service of notice is completed, an electric utility must file, in the docket assigned to its written plan, proof of notice to the persons or entities specified under subparagraphs (A) and (B) of this paragraph and a list of such parties by name specifying whether the person or entity qualifies as an affected property owner under subsection (b)(1) of this section. Failure by an electric utility to provide timely notice, as determined by the presiding officer, will toll the intervention deadline under subparagraph (E) of this paragraph until the date timely notice is issued. Affected property owners automatically qualify as intervenors for proceedings under this section.

(A) Notice to affected property owners under this section must:

(i) Be sent by first class mail to the last known address of each affected property owner whose property is listed on the most recent tax roll of each county authorized to levy property taxes against the property and, if available, by electronic service.

(ii) Conspicuously state in plain language:

(I) that the electric utility has determined the recipient is an affected property owner as defined under 16 Texas Administrative Code §25.218(b)(1) and that the mailing is a notice of intent to use the utility's easement for middle mile broadband implementation;

(II) the recipient's status as an affected property owner means the utility's easement or other property right planned by the utility for the provision of third-party middle mile broadband service does not include language permitting middle mile broadband service;

(III) that under PURA Chapter 43 and 16 Texas Administrative Code §25.218, a utility may implement middle mile broadband service without modifying or expanding the easement if the affected property owner does not submit a timely written protest;

(IV) that a written protest may be submitted electronically in the docket for the middle mile broadband proceeding using the interchange on the commission's website or mailed with reference to the docket to Commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326;

(V) the project number for the filing of notice of written plans and the docket number for utility's specific middle mile broadband plan;

(VI) that a written protest can be filed for any reason;

(VII) that a written protest is considered timely if submitted not later than the 60th day from the postmarked date of the notice;

(VIII) that a submitted written protest can be retracted at any time by the recipient through a mailed or electronic filing with the commission in the specified docket, or resolved by written agreement with the electric utility;

(IX) that other legal authorization could override the written protest;

(X) an estimated schedule for construction with a statement that the schedule is subject to change;

(XI) the recipient qualifies as an intervenor and may seek to intervene in the docket, and that intervention is not the same as a written protest;

(XII) specify the intervention deadline in accordance with subparagraph (E) of this paragraph; and

(XIII) a link or website address for the commission website for public participation.

(iii) State whether any new fiber optic cables used for middle mile broadband service will be located above or below ground in the easement or other property right.

(B) Notice to the following persons or entities must be sent by first class mail to the last known address of the person or entity or by electronic service:

(i) all parties in the electric utility's last comprehensive base-rate proceeding;

(ii) property owners whose property is listed on the most recent tax roll of each county authorized to levy property taxes against the property and whose real property is burdened by an existing easement, right-of-way or other property right that permits the provision of third-party middle mile broadband service on an electric utility delivery system;

(iii) the Office of Public Utility Counsel; and

(iv) municipalities crossed by or within five miles of the planned project and counties that are crossed by the planned project.

(C) Notice to the parties described under subparagraph (B) of this paragraph must conspicuously state in plain language:

(i) that the electric utility has determined the recipient is not an affected property owner as defined under Chapter 16, Texas Administrative Code §25.218(b)(1), that the mailing is a notice of intent to use the utility's easement for implementation of middle mile broadband service, and that the electric utility's determination may be challenged in the docket listed in the notice if the person or entity files a motion to intervene in the proceeding and that motion to intervene is granted by the presiding officer;

(ii) the intervention deadline in accordance with subparagraph (E) of this paragraph; and

(iii) a link or website address for the commission website for public participation.

(D) The electric utility must file a notice of written middle mile broadband plan proceeding and must include in the notice the docket number for the proceeding. The commission will designate a project number for the filing of notice of plans under this section. This filing serves as notice to all other interested parties.

(E) The intervention deadline is 45 days from the date the utility files its notice of written middle mile broadband plan proceeding in accordance with subparagraph (D) of this paragraph. The lapse of the intervention deadline does not prevent an affected property owner from submitting a written protest under subparagraph (F) of this paragraph.

(F) Protest by affected property owner.

(i) Not later than the 60th day after the postmarked date an electric utility mails notice to affected property owners in accordance with subparagraph (A) of this paragraph, an affected property owner may submit to the electric utility a written protest of the intended use of the easement or other property right for middle mile broadband service by filing the protest with the commission in the docket assigned to the middle mile broadband plan proceeding. For purposes of this section, an electric utility is deemed to have received a written protest filed with the commission in the appropriate docket number.

(ii) If an electric utility receives a written protest directly from an affected property owner, the electric utility must file the protest with the commission within three working days of receipt.

(iii) An electric utility that receives a timely written protest from an affected property owner must not use the easement or other property right for middle mile broadband service unless that use is authorized by law or the protester later retracts its protest or agrees in writing to that use.

(iv) An electric utility that receives a timely written protest from an affected property owner regarding the proposed middle mile broadband plan may cancel the project at any time.

(v) An electric utility that receives any timely written protests must file an update with the commission that any applicable protests have been resolved in accordance with clause (iii) of this subparagraph before implementing its middle mile broadband plan.

(vi) If an affected property owner fails to submit a timely written protest, an electric utility may proceed with a commission-approved plan to provide middle mile broadband service without modifying or expanding the easement for the property owner.

(3) Commission processing of electric utility's plan.

(A) The commission must approve, modify, or reject an electric utility's middle mile broadband plan submitted to the commission under this section not later than the 181st day after the date all information necessary for the plan to be deemed materially sufficient was filed.

(B) Following the filing of a plan by an electric utility under this section, the commission may review the electric utility's plan for middle mile broadband service under subsection (f) of this section or refer the application to the State Office of Administrative Hearings (SOAH). Upon referral to SOAH:

(i) The commission delegates authority to the presiding officer to deem plans sufficient, approve plans, and modify approved plans filed under this subsection through a notice of approval under §22.35(b)(1) (relating to Informal Disposition) of this title.

(ii) The presiding officer will review for sufficiency the electric utility's plan for middle mile broadband service under paragraph (1) of this subsection and notice to potential intervenors under paragraph (2) of this subsection.

(iii) The presiding officer must establish a procedural schedule that will enable the commission to, approve, modify, or reject the plan not later than the 181st day after the date all information necessary for the plan to be deemed materially sufficient was filed.

(C) A motion to find a plan filing materially deficient must be filed no later than seven days after the intervention deadline. The motion must specify the nature of the deficiency, the relevant portions of the plan, and cite the particular requirement under paragraph (1) of this subsection with which the plan is alleged not to comply. The electric utility's response to a motion to find a plan materially deficient must be filed no later than five working days after such motion is received.

(D) An approved plan may be updated or amended subject to commission approval in accordance with this subsection.

(g) Cost recovery for deployment of middle mile broadband facilities.

(1) An electric utility's investment in facilities installed by that electric utility to provide middle mile broadband service under a plan approved by the commission under this section is eligible for inclusion in the electric utility's invested capital.

(2) In a proceeding under PURA Chapter 36, revenue received by an electric utility from an internet service provider for the use of middle mile broadband service must be applied as a revenue credit to customers in proportion to the customers' funding of the underlying infrastructure. For purposes of this paragraph, the term ‘customers’ refers to ‘rate classes.’

(3) An electric utility submitting a plan must ensure that revenues received by the electric utility from the provision of middle mile broadband service offset all costs directly attributable to the middle mile broadband service, including but not limited to, construction, maintenance, operations, taxes, other costs, and return.

(4) If revenues received by an electric utility from an internet service provider for the use of middle mile broadband service are insufficient to offset the costs under paragraph (3) of this subsection, the utility must ensure that its regulated rates prevent ratepayer cross-subsidization.

(h) Reliability of electric systems maintained.

(1) An electric utility that installs and operates facilities to provide middle mile broadband service must employ all reasonable measures to ensure that the operation of the middle mile broadband service does not interfere with or diminish the reliability of the electric utility's electric delivery system.

(2) If a disruption in the provision of electric service occurs, the electric utility is governed by the terms and conditions of the retail electric delivery service tariff.

(3) The electric utility may take all necessary actions regarding its middle mile broadband service and the facilities required in the provision of that service to address circumstances that may pose health, safety, security, or reliability concerns.

(4) At all times, the provision of broadband service is secondary to the reliable provision of electric delivery services.

(5) Except as provided by contract or tariff, an electric utility is not liable to any person, including an internet service provider,

for any damages, including direct, indirect, physical, economic, exemplary, or consequential damages, including loss of business, loss of profits or revenue, or loss of production capacity caused by a fluctuation, disruption, or interruption of middle mile broadband service that is caused in whole or in part by:

(A) force majeure; or

(B) the electric utility's provision of electric delivery services, including actions taken by the electric utility to ensure the reliability and security of the electric delivery system and actions taken in response to address all circumstances that may pose health, safety, security, or reliability concerns.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2022.

TRD-202201119
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: April 21, 2022
Proposal publication date: December 31, 2021
For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1027

The Texas Education Agency (TEA) adopts an amendment to §61.1027, concerning report on the number of educationally disadvantaged students for calculating the compensatory education allotment. The amendment is adopted without changes to the proposed text as published in the January 28, 2022 issue of the *Texas Register* (47 TexReg 247) and will not be republished. The adopted amendment will allow students participating in virtual learning in the 2021-2022 school year to generate state compensatory education allotment funds.

REASONED JUSTIFICATION: Section 61.1027 establishes requirements for school districts to report the number of educationally disadvantaged students attending campuses not participating in the National School Lunch Program to derive an eligible student count by an alternative method for the purpose of receiving the compensatory education allotment.

Some students who are being taught through a virtual instruction setting during the 2021-2022 school year may not generate certain types of state funding, including compensatory education allotment funds. The adopted amendment will allow such students to generate state compensatory education allotment funds for the 2021-2022 school year in order to provide the students with the additional services they may need. School districts will be required to report the students through the Texas Student Data System Public Education Information Management System with average daily attendance (ADA) eligibility code 9, Enrolled, Not in Membership Due to Virtual Learning.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began January 28, 2022, and ended February 28, 2022. Following is a summary of the public comment received and the agency response.

Comment: An individual asked if students coded with ADA eligibility code 9 would be eligible for other state allotments.

Response: The agency provides the following clarification. The amendment to §61.1027 allows for certain students who are enrolled but not in membership to be served by the local educational agency (LEA) and receive compensatory education funding. The LEA would be required to meet the needs of the student if the student qualifies for other supports such as special education or bilingual/English as a second language services. An FAQ document that provides more information regarding ADA eligibility code 9 is available on the TEA website at https://tea.texas.gov/sites/default/files/covid/Non-TXVSN-Remote-Instruction.pdf.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §48.104, which provides funding for the compensatory education program based on students meeting certain criteria.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.104.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2022.

TRD-202201087
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: April 19, 2022
Proposal publication date: January 28, 2022
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §§365.2, 365.4, 365.6, 365.10, 365.13, 365.16 - 365.18

The Texas State Board of Plumbing Examiners (Board) in a duly noticed meeting on March 24, 2022, adopted the repeal of 22 Texas Administrative Code §365.2 relating to Exemptions; 22 Texas Administrative Code §365.4 relating to Issuance of License, Registration or Endorsement; 22 Texas Administrative Code §365.6 relating to Expiration of License, Registration or Endorsement; 22 Texas Administrative Code §365.10 relating to Application for License, Registration or Endorsement after Revocation; 22 Texas Administrative Code §365.13 relating to Licensing or Registration of Individuals in Default on a Guaran-

teed Student Loan or in Arrears on Child Support Payments; 22 Texas Administrative Code §365.16 relating to Board Approval of Course Providers for Continuing Professional Education Programs; 22 Texas Administrative Code §365.17 relating to Board Approval of Course Instructors for Continuing Professional Education Programs; and 22 Texas Administrative Code §365.18 relating to Publishers of Course Materials for Continuing Professional Education Programs. The repeals at 22 TAC §§365.2, 365.4, 365.6, 365.10, 365.13, and 365.16 - 365.18 are adopted without changes to the proposed text as published in the October 15, 2021, issue of the *Texas Register* (46 TexReg 7017). The rules will not be republished.

JUSTIFICATION

The adopted repeals eliminate possible industry and public confusion by removing duplicate, obsolete, and inactive rules. The repeal of §365.2 eliminates duplicate exemption language found in §§1301.051-.058 of the Texas Occupations Code. The repeal of §365.4 eliminates duplicate language found in §§1301.352, 1301.359, and 1301.401 of the Texas Occupations Code. The repeal of §365.6 eliminates duplicate language found in §§1301.403, 1301.404, and 1301.405 of the Texas Occupations Code. The repeal of §365.10(a) - (c) eliminates duplicate language found in §1301.451 of the Texas Occupations Code. The repeal of §365.10(d) refers to the Enforcement Committee, which no longer exists as a result of House Bill 636 (HB 636) passed by the 87th Legislature, Regular Session (2021). The repeal of §365.13(a) - (e) eliminates provisions rendered obsolete by Senate Bill (SB) 37 passed by the 86th Legislature, Regular Session (2019) which amended Texas Occupations Code §56.003 so that a licensing authority may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract. The repeal at §365.13(f) - (g) eliminates provisions that are addressed in §232.0135 of the Texas Family Code which makes its inclusion in the rules redundant. The repeal of §§365.16, 365.17, and 365.18 eliminate provisions rendered obsolete by statutory change. These rules provide for Board approval of continuing education and training programs, continuing education instructions, and provisions for publishers of course material. As a result of HB 636, the Board was granted explicit rule making authority to set the minimum curriculum standards for continuing education and training programs, and qualification for continuing education instructors. Notably, HB 636 did not grant the Board explicit rule making authority to regulate publishers of material. HB 636 also moved administrative approval of course providers and instructors to the Executive Director. Accordingly, the Board has determined that Rule repeals at §§365.16, 365.17 and 365.18 are appropriate given the changes implemented by HB 636.

HOW THE RULES WILL FUNCTION

The adopted repeals allow the efficient implementation of new rules to support statutory changes to continuing education and the efficient regulation of the program.

SUMMARY OF COMMENTS

No comments were received on the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce Chapter 1301 of the Occupations Code (Plumbing License Law).

This repeal affects the Plumbing License Law. No other statute is affected.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2022.

TRD-202201099
Lisa G. Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: April 20, 2022
Proposal publication date: October 15, 2021
For further information, please call: (512) 936-5216

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 561. EMPLOYEE MISCONDUCT REGISTRY

26 TAC §§561.1 - 561.9

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 561 in Title 26, Part 1, of the Texas Administrative Code (TAC), concerning Employee Misconduct Registry (EMR). The new chapter consists of §§561.1, 561.2, 561.3, 561.4, 561.5, 561.6, 561.7, 561.8, and 561.9.

The new rules are adopted without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8900). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the new rules is to update and relocate the Employee Misconduct Registry (EMR) rules from 40 TAC Chapter 93 to 26 TAC Chapter 561. The relocation of the rules is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the Department of Aging and Disability Services (DADS) to HHSC, effective September 1, 2017. The repeal is adopted elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended January 24, 2022.

During this period, HHSC did not receive any comments regarding the proposed new rules.

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and by Texas Health and Safety Code Chapter 253, and specifically §253.007, Employee Misconduct Registry, which requires HHSC to establish an employee misconduct registry and establish certain rules to implement the chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2022.

TRD-202201144
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: April 21, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 438-3161

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§114.1, 114.50, and 114.82.

Amendments to §§114.1, 114.50, and 114.82 are adopted *without changes* to the proposed text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8204) and, therefore, will not be republished.

Amended §§114.1, 114.50, and 114.82 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) in a future SIP revision.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 604, 86th Texas Legislature, 2019, added digital license plates to Chapter 504 of the Texas Transportation Code (TTC). This adopted rulemaking will update TCEQ rules to be consistent with the TTC, relating to the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield.

The inspection and maintenance (I/M) rules require the TCEQ to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS). Currently, motorists are required to demonstrate compliance with the I/M program by displaying a current valid vehicle registration insignia sticker affixed to the vehicle's windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS. The I/M rules also require denying renewal of registration until a vehicle complies with I/M program requirements.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

The adopted amendments to Chapter 114 will allow a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield. Because the emissions inspection is still required within 90 days of the registration expiration, these amendments are not intended or expected to impact the compliance rate and the effectiveness of the I/M program. The adopted rulemaking will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone National Ambient Air Quality Standards.

Section by Section Discussion

The following adopted amendments will ensure compliance with Chapter 504 of the TTC and that proof of compliance with I/M requirements are consistent between the TCEQ, the Texas Department of Motor Vehicles (DMV), and the DPS.

The commission adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

§114.1, Definitions

The definition for vehicle registration insignia sticker included language that it be affixed on the windshield of a vehicle. The adopted revisions removed the restrictive language and added language to allow for alternative forms of proof of compliance with I/M requirements provided for by the DPS or the DMV.

§114.50, Vehicle Emissions Inspection Requirements

The adopted revisions to §114.50(b)(1)(B) removed language for affixing the vehicle registration insignia sticker to the vehicle windshield. In addition, the adopted revisions added language to allow for different forms of proof of compliance with I/M requirements provided by the DPS and the DMV.

§114.82, Control Requirements

The adopted revisions to §114.82(a)(2) removed language for affixing the vehicle registration insignia sticker to the vehicle windshield. In addition, the adopted revisions added language to allow for different forms of proof of compliance with I/M requirements provided by the DPS and the DMV.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the adopted rules do not meet the definition of a "Major environmental rule." TGC, §2001.0225(g)(3), states that a "Major environmental rule" is "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The adopted rulemaking does not constitute a major environmental rule under TGC, §2001.0225(g)(3), because: (1) the specific intent of the adopted rulemaking is not to protect the environment or reduce risks to human health from environmental exposure, but rather to modify administrative aspects of an existing program by implementing SB 604, which allows the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield; and (2) as discussed in the Fiscal Note, Public Benefits and Costs, Small Business Regulatory Flexibility Analysis, and the Local Employment Impact Statement sections of this preamble, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, compe-

tition, or jobs, nor will the adopted rules adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state because the amendments are merely administrative changes to the existing program.

Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule.

TGC, §2001.0225, applies only to a major environmental rule which: (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of the adopted rulemaking is to implement applicable sections of SB 604, relating to the display of a vehicle's registration insignia. SB 604 allows the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield. The adopted rulemaking: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) is not adopted solely under the general powers of the agency; and (4) does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. Because the adopted rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under TGC, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rules constitute a taking under TGC, Chapter 2007. The commission's preliminary assessment indicates TGC, Chapter 2007, does not apply.

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

The specific purpose of the adopted rulemaking is to implement applicable sections of SB 604, relating to the display of a vehicle's registration insignia sticker. SB 604 allows the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield. Therefore, the adopted rulemaking does not have any impact on private real property.

Promulgation and enforcement of the adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. These rules will not be burdensome, restrictive, or limiting of rights to private real property because the adopted rules do not affect a landowner's rights in private real property. This rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the CMP.

Public Comment

The comment period opened on December 3, 2021, and the commission offered a public hearing on January 4, 2022. The comment period closed on January 5, 2022. The commission received no comments.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.1

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule

to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 et seq.; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to adopt an inspection and maintenance program for participating early action compact counties.

The rule revisions implement amendments to Texas Transportation Code, §§504.151 - 504.157, which were amended by Senate Bill 604, 86th Texas Legislature, 2019.

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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Charmaine Backens
Deputy Director, Environmental Law Division
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For further information, please call: (512) 239-0600

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §114.50

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (Texas Clean Air Act), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Subchapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 et seq.; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties.

The rule revisions implement amendments to Texas Transportation Code, §§504.151 - 504.157, which were amended by Senate Bill 604, 86th Texas Legislature, 2019.

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DIVISION 3. EARLY ACTION COMPACT COUNTIES

30 TAC §114.82

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, General Powers; TWC, §5.103, Rules; and TWC, §5.105, General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to propose rules necessary to carry out its powers and duties under the TWC; and TWC, §5.013, General Jurisdiction of Commission, which states the commission's authority over various statutory programs. The revisions are also adopted under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to propose rules consistent with the policy and purposes of THSC, Chapter 382 (Texas Clean Air Act), and to propose rules that differentiate among particular conditions, particular sources, and particular areas of the state. The revisions are also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.019, Methods Used to Control and Reduce Emissions From Land Vehicles, which provides the commission the authority to propose rules to control and reduce emissions from engines used to propel land vehicles; THSC, Chapter 382, Sub-

chapter G, Vehicle Emissions, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of Federal Clean Air Act, 42 United States Code, §§7401 et seq.; and THSC, Chapter 382, Subchapter H, Vehicle Emissions Programs in Certain Counties, which authorizes the commission to propose an inspection and maintenance program for participating early action compact counties.

The rule revisions implement amendments to Texas Transportation Code, §§504.151 - 504.157, which were amended by Senate Bill 604, 86th Texas Legislature, 2019.

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER P. ADDITIONAL CONDITIONS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §§305.542 - 305.544

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§305.542 - 305.544.

New §§305.542 - 305.544 are adopted *without changes* to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6884), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is being adopted in response to a quadrennial rule review wherein the commission determined that 30 TAC Chapter 308 Subchapters C and J, were obsolete (Non-Rule Project Number 2019-034-308-OW; December 13, 2019, issue of the *Texas Register* (44 TexReg 7718)). Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations similar to Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts by reference federal regulations that were previously adopted by reference in Chapters 308, 314, and 315, except for Chapter 308, Subchapters C and J, which were identified as obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates were not re-proposed in this rulemaking. Subchapter J relating to cooling water intakes will be adopted in the new rule §305.544. Additionally, this rulemaking adopts by reference federal regulations related to cooling water intake structures at oil and gas facilities (40 Code of Federal Regulations (CFR) Part 125, Subpart N) that were not previously adopted in Chapter 308 because TCEQ didn't have authority to regulate oil and gas facilities until the United States Environmental Protection Agency (EPA) granted TPDES program authority for wastewater discharges from oil and gas facilities in January 2021. Concurrently with this rulemaking, the commission is repealing 30 TAC Chapters 308, 314, and 315.

Section by Section Discussion

§305.542. Pretreatment Standards.

Adopted new §305.542 adopts by reference 40 CFR Part 403, as amended, with the following exceptions. The commission is not adopting 40 CFR §§403.16 or 40 CFR §403.19 because 40 CFR §403.16 is less stringent than 30 TAC §305.535 and 40 CFR §403.19 expired in 2005. Additionally, the adopted rule states that where 40 CFR §403.11 provides procedures for requesting and holding a public hearing, the commission shall instead require notice of and hold a public meeting. Public meetings conducted by the executive director provide an opportunity for public comment and follow the procedures described in 40 CFR §403.11.

The federal regulations in 40 CFR Part 403 establish responsibilities of Federal, State, and local government, industry, and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works or which may contaminate sewage sludge.

The federal regulations in 40 CFR Part 403, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 315. EPA amended 40 CFR Part 403 several times after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 403 adopted on November 2, 2020, as amended.

§305.543. Toxic Pollutant Effluent Standards and Prohibitions.

Adopted new §305.543 adopts by reference 40 CFR Part 129, Subpart A, as in effect on the date of TPDES program authorization, as amended. No changes to these federal regulations have been adopted by EPA since the date of TPDES program authorization in September 1998. The federal regulations in 40 CFR Part 129 establish effluent standards or prohibitions for the discharge of toxic pollutants.

§305.544. Criteria and Standards for Texas Pollutant Discharge Elimination System Permits.

Adopted new §305.544(1), (2), (4), and (8) adopts by reference 40 CFR Part 125, Subparts A, B, G, and M, respectively, as each of these subparts were in effect on the date of TPDES program authorization, as amended. No changes to these federal regulations have been adopted by EPA since the date of TPDES program authorization in September 1998.

The federal regulations in 40 CFR Part 125, Subpart A establish criteria and standards for the imposition of technology-based treatment requirements in permits under Clean Water Act (CWA) §301(b), including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under CWA §402(a)(1). 40 CFR Part 125, Subpart B estab-

lishes guidelines under CWA §318 and §402 for approval of any discharge of pollutants associated with an aquaculture project. 40 CFR Part 125, Subpart G establishes the criteria to be applied by EPA in acting on CWA §301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a CWA §301(h) modification of the secondary treatment requirements. 40 CFR Part 125, Subpart M establishes guidelines for issuance of permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

Adopted new §305.544(3) adopts by reference 40 CFR Part 125, Subpart D, as amended. The federal regulations in 40 CFR Part 125, Subpart D establish the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under CWA §301 and §304 (referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits.

The federal regulations in 40 CFR Part 125, Subpart D, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart D after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart D adopted on May 15, 2000, as amended.

Adopted new §305.544(5) adopts by reference 40 CFR Part 125, Subpart H, as amended. The federal regulations in 40 CFR Part 125, Subpart H describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under CWA §316(a) in permits issued under CWA §402(a).

The federal regulations in 40 CFR Part 125, Subpart H, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart H after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart H adopted on May 15, 2000, as amended.

Adopted new §305.544(6) adopts by reference 40 CFR Part 125, Subpart I, as amended. The federal regulations in 40 CFR Part 125, Subpart I establish requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new facilities. The term "new facility" is defined in 40 CFR §125.83.

The federal regulations in 40 CFR Part 125, Subpart I, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA amended 40 CFR Part 125, Subpart I after 1998. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart I adopted on August 15, 2014, as amended.

Adopted new §305.544(7) adopts by reference 40 CFR Part 125, Subpart J, as amended. The federal regulations in 40 CFR Part 125, Subpart J establish the requirements that apply to cooling water intake structures at existing facilities. The term "existing facility" is defined in 40 CFR §125.92.

The federal regulations in 40 CFR Part 125, Subpart J, which were in effect on the date of TPDES program authorization (i.e., September 1998), were previously adopted by reference, as amended, in 30 TAC Chapter 308. EPA repealed 40 CFR Part 125, Subpart J after 1998 and subsequently adopted new regulations in 40 CFR Part 125, Subpart J. The adopted rule adopts by reference the most current version of 40 CFR Part 125, Subpart J adopted on August 15, 2014, as amended.

Adopted new §305.544(9) adopts by reference 40 CFR Part 125, Subpart N, as amended. The federal regulations in 40 CFR Part 125, Subpart N establish requirements that apply to the location, design, construction, and capacity of cooling water intake structures at new offshore oil and gas extraction facilities. The term "new offshore oil and gas extraction facility" is defined in 40 CFR §125.92. The adopted rule adopts by reference the current version of 40 CFR Part 125, Subpart N adopted on June 16, 2006, as amended.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 308, Subchapters A, B, D, G, H, I, and M that are adopted for repeal will be re-adopted within Chapter 305, Subchapter P in adopted new §§305.542 - 305.544 to improve the overall organization of TCEQ rules related to the TPDES program. This rulemaking is also being adopted in response to a quadrennial rule review wherein the commission determined that Chapter 308, Subchapters C and J were obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-adopted in this rulemaking. Subchapter J relating to cooling water intakes will be re-adopted in the new §305.544. In addition, the adopted rulemaking adopts by reference 40 CFR Part 125, Subpart N that was not previously adopted in Chapter 308. Therefore, it is not anticipated that the adopted new rules would 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 commission concludes that the adopted new rules do not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted new rules did meet the definition of a major environmental rule, the adopted new rules would not be subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted new rules of §§305.542 - 305.544

would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted new rules would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an assessment of whether the rulemaking adoption constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to consolidate rules from Chapters 308 (with the exception of Subchapters C and J), 314, and 315 into Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program. In addition, the rulemaking adoption will adopt by reference 40 CFR Part 125, Subpart N, that was not previously adopted in Chapter 308. The rulemaking adoption will substantially advance this stated purpose. Promulgation and enforcement of this rulemaking adoption will be neither a statutory nor a constitutional taking of private real property because the rulemaking adoption will not affect real property.

In particular, there are no burdens imposed on private real property, and the rulemaking adoption will consolidate rules for the purpose of improving organization of TCEQ rules related to the TPDES program. Because the rulemaking adoption will not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the adopted new rules. Therefore, this rulemaking adoption will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rulemaking adoption in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the rulemaking adoption includes policies for discharges of wastewater.

The rulemaking adoption is consistent with the above goals and policies by requiring wastewater discharges to comply with federal regulations established to protect water resources.

Promulgation and enforcement of the rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

Statutory Authority

The rulemaking is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies, and to protect water quality in the state.

The adopted new rules implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 308. CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141.

The repeal of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141 is adopted *without changes* to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6888), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is being adopted in response to a quadrennial rule review wherein the commission determined that 30 TAC Chapter 308 Subchapters C and J were obsolete (Non-Rule

Project Number 2019-034-308-OW; December 13, 2019, issue of the *Texas Register* (44 TexReg 7718)). Additionally, the executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts the repeal of Chapter 308. Concurrently with this rulemaking, the commission is adopting new §305.544 to adopt by reference federal regulations that were previously adopted by reference in Chapter 308, except Subchapters C and J which were determined to be obsolete. Subchapter C in its entirety and Subchapter J as relating to compliance dates will not be re-proposed. Subchapter J relating to cooling water intakes will be adopted in the new rule §305.544.

Section by Section Discussion

The commission adopts the repeal of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141. These sections adopt by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 125. In a concurrent rulemaking, the commission is adopting new §305.544 to adopt by reference 40 CFR Part 125.

Final Regulatory Impact Determination

The commission reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 308 Subchapters A, B, D, G, H, I, and M are adopted for repeal because the executive director has identified them as one of several rules related to the TPDES program that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 308 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. This rulemaking is also being adopted in response to a quadrennial rule review wherein the commission determined that Chapter 308 Subchapters C and J were obsolete. Therefore, it is not anticipated that the adopted repeals would 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 commission concludes that the adopted repeals do not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted repeals did meet the definition of a major environmental rule, the adopted repeals would not be subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeals of §§308.1, 308.21, 308.31, 308.41, 308.71, 308.81, 308.91, 308.101, and 308.141 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeals would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted repeals and performed an assessment of whether the repeals constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to repeal rules that will be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 308 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation will improve the overall organization of TCEQ rules related to the TPDES program. In addition, this rulemaking is also being adopted in response to a quadrennial rule review wherein the commission determined that Chapter 308, Subchapters C and J were obsolete. These subchapters will not be re-proposed or consolidated into Chapter 305, Subchapter P. The adopted repeals will substantially advance these stated purposes. Promulgation and enforcement of these adopted repeals will be neither a statutory nor a constitutional taking of private real property because the adopted repeals will not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeals will eliminate both unnecessary rules and obsolete rules. Because the repeals would not affect real property, they would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these adopted repeals will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applica-

ble to the rulemaking adoption include policies for discharges of wastewater.

The rulemaking adoption is consistent with the above goals and policies by requiring wastewater discharges to comply with federal regulations established to protect water resources.

Promulgation and enforcement of the rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

SUBCHAPTER A. CRITERIA AND STANDARDS FOR IMPOSING TECHNOLOGY-BASED TREATMENT REQUIREMENTS

30 TAC §308.1

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0600

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SUBCHAPTER B. CRITERIA FOR ISSUANCE OF PERMITS TO AQUACULTURE PROJECTS

30 TAC §308.21

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CRITERIA AND EXTENDING COMPLIANCE DATES FOR FACILITIES INSTALLING INNOVATIVE TECHNOLOGY UNDER THE CLEAN WATER ACT, §301(K)

30 TAC §308.31

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and

the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. CRITERIA AND STANDARDS FOR DETERMINING FUNDAMENTALLY DIFFERENT FACTORS UNDER THE CLEAN WATER ACT, §301(B)(1)(A), (B)(2)(A), AND (E)

30 TAC §308.41

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. CRITERIA FOR MODIFYING THE SECONDARY TREATMENT

30 TAC §308.71

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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. CRITERIA FOR DETERMINING ALTERNATIVE EFFLUENT LIMITATIONS UNDER THE CLEAN WATER ACT, §316(A)

30 TAC §308.81

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission un-

der the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. CRITERIA APPLICABLE TO COOLING WATER INTAKE STRUCTURES UNDER CLEAN WATER ACT, §316(b)

30 TAC §308.91

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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 J. CRITERIA FOR EXTENDING COMPLIANCE DATES UNDER THE CLEAN WATER ACT, §301(I)

30 TAC §308.101

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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 M. OCEAN DISCHARGE CRITERIA

30 TAC §308.141

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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 314. TOXIC POLLUTANT EFFLUENT STANDARDS

30 TAC §314.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §314.1.

The repeal of §314.1 is adopted *without changes* to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6894) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts the repeal of 30 TAC Chapter 314. Concurrently with this rulemaking, the commission is adopting new 30 TAC §305.543 to adopt by reference federal regulations that were previously adopted by reference in 30 TAC Chapter 314.

Section Discussion

The commission adopts the repeal of §314.1, which adopts by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 129. In a concurrent rulemaking, the commission is adopting new §305.543 to adopt by reference 40 CFR Part 129.

Final Regulatory Impact Determination

The commission reviewed the adopted repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225, because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 314 is adopted for repeal because the executive director has identified it as one of several rules related to the TPDES program that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. Therefore, it is not anticipated that the adopted repeal would 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 commission concludes that the adopted repeal does not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted repeal did meet the definition of a major environmental rule, the adopted repeal is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeal of §314.1 will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeal would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted repeal and performed an assessment of whether the adopted repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to repeal a rule that will be more ap-

propriately consolidated into Chapter 305, Subchapter P. Chapter 314 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation will improve the overall organization of TCEQ rules related to the TPDES program. The adopted repeal will substantially advance this stated purpose. Promulgation and enforcement of this adopted repeal will be neither a statutory nor a constitutional taking of private real property because the adopted repeal would not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeal will eliminate an unnecessary rule that would be re-proposed and consolidated in Chapter 305, Subchapter P. Because the adopted repeal would not affect real property, it would not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, this adopted repeal will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the rulemaking adoption include policies for discharges of wastewater.

The rulemaking adoption is consistent with the above goals and policies by requiring wastewater discharges to comply with federal regulations established to protect water resources.

Promulgation and enforcement of the rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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 315. PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

SUBCHAPTER A. GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

30 TAC §315.1

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §315.1.

The repeal of §315.1 is adopted *without changes* to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6896), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The executive director identified several rules related to the Texas Pollutant Discharge Elimination System (TPDES) program that would be more appropriately consolidated into 30 TAC Chapter 305, Subchapter P. These rules include 30 TAC Chapters 308, 314, and 315, which contain adoption by reference of federal regulations, similar to 30 TAC Chapter 305, Subchapter P. Consolidating these rules will improve the overall organization of TCEQ rules related to the TPDES program.

This rulemaking adopts the repeal of Chapter 315. Concurrently with this rulemaking, the commission is adopting new §305.542 to adopt by reference federal regulations that were previously adopted by reference in Chapter 315.

Section Discussion

The commission adopts the repeal of §315.1 which adopts by reference federal regulations in 40 Code of Federal Regulations (CFR) Part 403. In a concurrent rulemaking, the commission is adopting new §305.542 to adopt by reference 40 CFR Part 403.

Final Regulatory Impact Determination

The commission reviewed the adopted repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeal is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "Major environmental rule" as defined in that statute. A "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 315 is adopted for repeal because the executive director has identified it as one of several rules related to the TPDES program that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 315 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation would improve the overall organization of TCEQ rules related to the TPDES program. Therefore, it is not anticipated that the adopted repeal would 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 commission concludes that the adopted repeal does not meet the definition of a "Major environmental rule."

Furthermore, even if the adopted repeal did meet the definition of a major environmental rule, the adopted repeal would not be subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeal of §315.1 would not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeal would not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted repeal and performed an assessment of whether the adopted repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted action is to repeal a rule that would be more appropriately consolidated into Chapter 305, Subchapter P. Chapter 315 contains adoption by reference of federal regulations, similar to Chapter 305, Subchapter P. Consolidation will improve the overall organization of TCEQ rules related to the TPDES program. The adopted repeal will substantially advance this stated purpose. Promulgation and enforcement of this adopted repeal will be neither a statutory nor a constitutional taking of private real property because the adopted repeal will not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeal will eliminate an unnecessary rule that will be re-proposed and consolidated in Chapter 305, Subchapter P. Because the adopted repeal will not affect real property, it will not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, this adopted repeal will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted repeal in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the rulemaking adoption is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rulemaking adoption include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the rulemaking adoption include policies for discharges of wastewater.

The rulemaking adoption is consistent with the above goals and policies by requiring wastewater discharges to comply with federal regulations established to protect water resources.

Promulgation and enforcement of the rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the rulemaking adoption will be consistent with these CMP goals and policies and the rulemaking will not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary

to carry out its powers and duties under the TWC and other laws of the state; TWC, §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted repeal implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027.

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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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0600

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CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220.

Repealed §§321.71 - 321.81, 321.91 - 321.97, and 321.211 - 321.220 are adopted *without changes* to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6898) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is being adopted in response to a quadrennial rule review (Non-Rule Project Number 2019-033-321-OW) wherein the commission determined that Chapter 321, Subchapters E, F, and L were obsolete (December 13, 2019, issue of the *Texas Register* (44 TexReg 7719)).

Chapter 321, Subchapter E regulated wastewater discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated wastewater discharges from the shrimp industry; and Subchapter L regulated wastewater discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the Memorandum of Agreement (MOA) between the TCEQ and the United States Environmental Protection Agency (EPA) concerning the National Pollutant Discharge Elimination System (NPDES) program prohibits the TCEQ from issuing wastewater discharge authorizations under these subchapters. The TCEQ authorizes these discharges under either an individual permit or general permit which comply with all necessary NPDES requirements.

Section by Section Discussion

Subchapter E: Surface Coal Mining, Preparation and Reclamation Activities

The commission adopts the repeal of §§321.71 - 321.81. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from surface coal mining, preparation and reclamation activities under an individual permit which comply with all necessary NPDES requirements.

Subchapter F: Shrimp Industry

The commission adopts the repeal of §§321.91 - 321.97. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from shrimp facilities under either an individual permit or general permit which comply with all necessary NPDES requirements.

Subchapter L: Discharges to Surface Waters from Motor Vehicles Cleaning Facilities

The commission adopts the repeal of §§321.211 - 321.220. The MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing wastewater discharge authorizations under this subchapter. The TCEQ authorizes discharges from motor vehicles cleaning facilities under an individual permit which comply with all necessary NPDES requirements.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking actions are not subject to that statute because the adopted rules do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific purpose of this rulemaking adoption is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. The adopted rulemaking repeals these subchapters pursuant to the MOA between the TCEQ and the EPA concerning the NPDES program. The MOA prohibits the TCEQ from issuing authorizations under these subchapters because they do not entail all NPDES requirements. The TCEQ authorizes the discharges described in Subchapters E, F, and L under an individual permit or general permit which comply with all necessary NPDES requirements. The adopted rulemaking action will promote consistency between federal and state rules.

Furthermore, even if the rulemaking adoption did meet the definition of a "Major environmental rule," it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmen-

tal rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the rulemaking adoption does not meet any of these requirements. First, this rulemaking adoption does not exceed a standard set by federal law, because it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the rulemaking adoption does not exceed an express requirement of state law, but rather, it expands the scope of an existing state law. Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission adopts the rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not adopt this rulemaking action solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for the adopted rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking is to repeal Chapter 321, Subchapters E, F, and L. Chapter 321, Subchapter E regulated discharges from surface coal mining, preparation, and reclamation activities; Subchapter F regulated discharges from the shrimp industry; and Subchapter L regulated discharges from motor vehicles cleaning facilities. These subchapters are obsolete because the MOA between the TCEQ and the EPA concerning the NPDES program prohibits the TCEQ from issuing authorizations under these subchapters. The TCEQ authorizes these discharges under an individual permit or general permit which comply with all necessary NPDES requirements.

The rulemaking adoption does not affect a landowner's rights in private real property because this adopted rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which will otherwise exist in the absence of the regulations. The rulemaking adoption does not constitute a taking because it does not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption was a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (Actions and Rules Subject to the Coastal Management Program), and therefore, required that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this adopted rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the adopted rulemaking does not affect any coastal natural resource areas because discharges from the activities regulated by the sections adopted for repeal are being authorized under either an individual permit or general permit which comply with NPDES requirements. Repealing these subchapters removes the ability of these activities to be authorized under a registration.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a virtual public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

SUBCHAPTER E. SURFACE COAL MINING, PREPARATION, AND RECLAMATION ACTIVITIES

30 TAC §§321.71 - 321.81

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The rulemaking adoption implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Charmaine Backens
Deputy Director, Environmental Law Division
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For further information, please call: (512) 239-0600

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SUBCHAPTER F. SHRIMP INDUSTRY

30 TAC §§321.91 - 321.97

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted rulemaking implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. DISCHARGES TO SURFACE WATERS FROM MOTOR VEHICLES CLEANING FACILITIES

30 TAC §§321.211 - 321.220

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the TWC and other laws of the state; TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

The adopted rulemaking implements the Memorandum of Agreement between the TCEQ and the United States Environmental Protection Agency concerning the National Pollutant Discharge Elimination System program, which prohibits the TCEQ from issuing authorizations under this subchapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 351. REGIONALIZATION
SUBCHAPTER D. LOWER RIO GRANDE VALLEY

30 TAC §§351.41 - 351.45

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §§351.41 - 351.45.

Repealed §§351.41 - 351.45 are adopted *without changes* to the text as published in the October 8, 2021, issue of the *Texas Register* (46 TexReg 6902) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is being adopted in response to a quadrennial rule review (Non-Rule Project Number 2019-029-351-OW) wherein the commission determined that Chapter 351, Subchapter D was obsolete (October 25, 2019, issue of the *Texas Register* (44 TexReg 6384)).

The rules in Chapter 351, Subchapter D, were based on Texas Water Code, Chapter 26, Subchapter C, Regional and Area-Wide Systems, which encourages and promotes the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state. Within any standard metropolitan statistical area in the state, the com-

mission is authorized to implement this policy by defining areas of regional or area-wide systems and designating a system to serve the area defined. In relation with this authority, the rules designated the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. The commission adopts this rulemaking because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area.

Section by Section Discussion

Subchapter D: Lower Rio Grande Valley

The commission adopts the repeal of §§351.41 - 351.45, which designated the Rio Grande Valley Pollution Control Authority as a regional provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking action is not subject to that statute because the adopted rules do not meet the criteria for "Major environmental rules" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific purpose of this rulemaking adoption is to repeal Chapter 351, Subchapter D, which designated the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter is obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

Furthermore, even if the rulemaking adoption did meet the definition of a "Major environmental rule," it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §201.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) is adopted solely under the general powers of the agency instead of under a specific state law.

In this case, the rulemaking adoption does not meet any of these requirements. First, this rulemaking adoption does not exceed a standard set by federal law because it promotes consistency with federal law and repeals rules that do exceed federal standards. Second, the rulemaking adoption does not exceed an express requirement of state law, but rather expands the scope of an existing state law. Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the commission adopts this rulemaking action under Texas Water Code, §§5.013, 5.102, 5.105, 5.120, 26.011, and 26.027. Therefore, the commission does not adopt the rulemaking action solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for the adopted rulemaking action pursuant to Texas Government Code, §2007.043. The specific purpose of this adopted rulemaking is to repeal Chapter 351, Subchapter D, which designated the Rio Grande Valley Pollution Control Authority as a regional wastewater service provider for the Lower Rio Grande Valley Regional Area. This subchapter was obsolete because the Rio Grande Valley Pollution Control Authority no longer exists nor are there any wastewater permits issued to any regional system in this regional area. Regulated entities that propose to install and operate a wastewater treatment plant in this regional area are currently required to obtain an individual permit to discharge wastewater.

The rulemaking adoption will not affect a landowner's rights in private real property because this adopted rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking adoption does not constitute a taking because it does not burden private real property.

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on November 9, 2021. The comment period closed on November 9, 2021. No public comments were received.

Statutory Authority

The rulemaking action is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which

authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state; TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state; and TWC, §26.081, which authorizes the commission to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

The rulemaking adoption implements TWC, §§5.103, 5.105, 5.013, and 26.081.

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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Charmaine Backens
Deputy Director, Environmental Law Division
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For further information, please call: (512) 239-0600

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §65.133

The Texas Parks and Wildlife Commission, in a duly noticed meeting on November 4, 2021, adopted an amendment to §65.133, concerning General Provisions, without changes to the proposed text as published in the October 1, 2021, issue of the *Texas Register* (46 TexReg 6528). The rule will not be republished.

Texas Parks and Wildlife Code, Chapter 43, Subchapter R, authorizes the department to issue a permit for the temporary detention of white-tailed deer for the purpose of propagation, known as the Deer Management Permit (DMP). The amendment is intended to eliminate the risk of exposure to chronic wasting disease (CWD) for deer in deer breeding facilities as a result of breeder bucks returning from DMP facilities. Current permit rules allow a buck deer held under a deer breeder permit to be introduced to a DMP pen and then returned to a deer breeding facility prior to the release of deer from the DMP pen, if approved under a deer management plan. The amendment eliminates those provisions authorizing the return of buck breeder deer from DMP pens.

The amendment is in response to the threat of possible exposure to chronic wasting disease (CWD). CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. CWD can be transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). CWD has been detected in multiple locations in Texas, primarily in deer breeding facilities. The department, along with the Texas Animal Health Commission, has been engaged in a long-term battle to detect and contain CWD. If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department received 15 comments opposing adoption of the rule as proposed. Of the 15, 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 allowing movement of breeder deer from DMP pens to deer breeding facilities would allow for additional monitoring. The department disagrees with the comment and responds that the risk of spreading CWD as a result of moving breeder from DMP pens far outweighs any monitoring benefit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that eliminating the ability to move breeder bucks from DMP pens would result in a black market for deer. The department disagrees with the comment and responds that the rule as adopted would require breeder bucks placed in a DMP pen to be released, which makes them free-ranging deer, the sale of which is a criminal offense. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should retain the Triple T and TTP programs. The department agrees with the comment and responds that it is not germane to the rulemaking. No changes were made as a result of the comment.

The department received five comments supporting adoption of the rule as proposed.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure.

The amendment affects Parks and Wildlife Code, Chapter 43, Subchapter R.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.589

The Comptroller of Public Accounts adopts amendments to §3.589, concerning margin: compensation, without changes to the proposed text as published in the February 18, 2022, issue of the *Texas Register* (47 TexReg 753). The amendments implement statutory changes to definitions, incorporate policy decisions, and improve readability. The rule will not be republished.

Throughout the section, the comptroller adds titles to statutory citations.

The comptroller deletes subsection (b)(1) and (2) relating to the definitions of assigned employee and client company to accommodate statutorily defined terms in Tax Code, §171.0001 (General Definitions). The comptroller adds new paragraph (1) to include the statutory definition of "Client" pursuant to Tax Code, §171.0001(6) because the statute replaced the term "Client company" with "Client." The comptroller adds new paragraph (2) to include the statutory definition of "Covered employee" according to Tax Code, §171.0001(8-a).

The comptroller amends paragraphs (6) and (7) to accommodate a new statutorily defined term and maintain alphabetical order of the section. The comptroller inserts the statutory term and definition of "Professional employer organization" into paragraph (6). Professional employer organization replaced the term "staff leasing services." The comptroller amends paragraph (7) to include the definition of the statutory term "Small employer" as it was previously just a citation to Insurance Code, §1501.002 (Definitions).

The comptroller adds new paragraph (9)(B) to include language concerning wages and cash compensation paid to employees in a foreign country, pursuant to STAR Accession No. 201510539L (June 14, 2016). Former subparagraphs (B) and (C) are relettered accordingly.

The comptroller amends subsection (c)(1), including subparagraphs (A) and (B), to improve readability.

The comptroller adds new subparagraphs (C) - (H) to include compensation thresholds for years 2012 through 2024, which reflect the biennial adjustment based on the Consumer Price Index pursuant to Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

The comptroller deletes subsection (e)(2)(B) and (D) pursuant to the findings of *Winstead PC v. Combs,* No. D-1-GN-12-000141 (201st Dist. Ct., Travis County, Tex. Feb. 7, 2013) (holding these subparagraphs were invalid to the extent the disallowed deductions were allowed for federal purposes). Subparagraph (C) is relettered as subparagraph (B).

The comptroller amends subsection (f) to reflect the new terms "professional employer organization" instead of "staff leasing company" and "covered" instead of "assigned" employee to maintain consistency with statutory definitions.

The comptroller amends paragraphs (2) and (3) to remove the word "company" from "client company" to maintain consistency with statutory terms.

The comptroller amends subsection (i) to reflect a policy change retroactively allowing the method of computing margin to be amended regardless of what method was elected on an original report pursuant to Star Accession No. 201206444L (June 12, 2012).

The comptroller deletes paragraphs (1) and (2) concerning the annual election, as they are no longer relevant pursuant to Star Accession No. 201206444L.

The comptroller adds subsection (j) to add language concerning expenses paid with qualifying loan or grant proceeds received for COVID-19 Relief pursuant to House Bill 1195, 87th Legislature, 2021, enacting Tax Code, §171.10131, and applies to reports originally due on or after January 1, 2021.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

These amendments implement Tax Code, §§171.0001 (General Definitions), 171.1013 (Determination of Compensation) and 171.10131 (Provisions Related to Certain Money Received for COVID-19 Relief).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 30, 2022.

TRD-202201084
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: April 19, 2022
Proposal publication date: February 18, 2022
For further information, please call: (512) 475-0387

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CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.47

The Comptroller of Public Accounts adopts amendments to §5.47 concerning deductions for payments to credit unions, without changes to the proposed text as published in the February 18, 2022, issue of the *Texas Register* (47 TexReg 756). The rule will not be republished.

The amendments to subsection (a) add a definition of "CAPPS"; remove the definitions of "payee identification number" and "USPS" because these terms are no longer used in the rule; and simplify other definitions by adding relevant statutory citations and clarifying the language of the definitions.

The amendments to subsection (b) combine the requirements for authorizing a deduction in paragraph (2) with the requirements for authorizing a change in the amount of a deduction in former paragraph (3); clarify that a state employee may authorize a deduction or a change in the amount of a deduction, or may cancel a deduction, by submitting a properly completed authorization form or a properly completed electronic authorization; clarify the process for authorizing a deduction or a change in the amount of a deduction, or for cancelling a deduction; provide that a completed authorization form must be submitted by a credit union to an employer in a secure manner; remove "then" as unnecessary; and change "working day" to "workday" to ensure the consistent use of defined terms.

The amendments to subsection (c) combine the requirements for the effective date of new deductions in paragraph (1) with the requirements for the effective dates of changes in deductions, or cancellation of deductions in former paragraphs (2) and (3); clarify that a state employee may authorize a deduction or a change in the amount of a deduction, or may cancel a deduction, by submitting a properly completed authorization form or a properly completed electronic authorization; clarify the process for authorizing a deduction or a change in the amount of a deduction, or for cancelling a deduction; and change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms.

The amendments to subsection (d) change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms.

The amendments to subsection (e) remove unnecessary requirements regarding the size of authorization forms.

The amendments to subsection (f) require a credit union that is applying for certification to submit to the comptroller its primary contact's email address, instead of the contact's facsimile telephone number; change "payee identification number" to "Internal Revenue Service employer identification number"; clarify that notifications required under subsection (f)(4) must be made in writing, whether they are provided in a paper or an electronic format; and remove "then" as unnecessary.

The amendments to subsection (g) remove "then," as unnecessary; change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; and correct the spelling of "hand-deliver."

The amendments to subsection (i) remove "then" as unnecessary; and clarify that notifications required under subsection (i)(2)(B) must be made in writing, whether they are provided in a paper or an electronic format.

The amendments to subsection (j) clarify that notifications required under subsections (j)(1)(A) and (E) must be made in writing, whether they are provided in a paper or an electronic format; change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; correct the spelling of "hand-delivered"; and remove "then" as unnecessary.

The amendments to subsection (k) require a participating credit union to notify the comptroller of a change in its primary contact's email address, instead of the contact's facsimile telephone number; change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; remove the language regarding detail reports submitted by the comptroller on behalf of a state agency because the comptroller does not submit detail reports on behalf of state agencies; provide that a credit union's report of all discrepancies between a detail report provided by an employer and the actual amount of deductions received from the employer must be submitted to an employer in a secure manner; correct the spelling of "hand-delivered"; remove "then" as unnecessary; and remove language regarding the return of magnetic tapes and cartridges because they are no longer used in this process.

The amendments to subsection (l) change "state agency" to "employer," as appropriate, to ensure the consistent use of defined terms; provide that a monthly or additional detail report submitted by an employer to a credit union must be submitted in a secure manner; remove "then" as unnecessary; remove the language regarding detail reports submitted by the comptroller on behalf of a state agency because the comptroller does not submit detail reports on behalf of state agencies; and establish a standard deadline by which an employer must submit a monthly detail report or an additional detail report to a participating credit union or other entity, no matter what type of process is used to submit the report.

The amendments to subsection (m) clarify that notifications required under this subsection must be made in writing, whether they are provided in a paper or an electronic format.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Government Code, §659.110, which authorizes the comptroller to establish procedures and adopt rules to administer the credit union program authorized by Government Code, Chapter 659, Subchapter G.

The amendments implement Government Code, §§659.101, 659.103, and 659.104-659.110.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2022.

TRD-202201140
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: April 21, 2022
Proposal publication date: February 18, 2022
For further information, please call: (512) 475-0387

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

40 TAC §§93.1 - 93.9

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Texas Administrative Code, Title 40, Part 1, Chapter 93, concerning Employee Misconduct Registry, consisting of §§93.1, 93.2, 93.3, 93.4, 93.5, 93.6, 93.7, 93.8, and 93.9.

The repeals are adopted without changes to the proposed text as published in the December 24, 2021, issue of the *Texas Register* (46 TexReg 8992). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals allow the rules to be updated and relocated to Texas Administrative Code, Title 26, Part 1, Chapter 561. The relocation is necessary to implement Senate Bill 200, 84th Legislature, Regular Session, 2015, which transferred the functions of the Department of Aging and Disability Services (DADS) to HHSC, effective September 1, 2017.

New rules replacing Title 40, Part 1, Chapter 93, are being adopted simultaneously elsewhere in this issue of the *Texas Register.*

COMMENTS

The 31-day comment period ended January 24, 2022. During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies. The repeal is also authorized by Texas Health and Safety Code Chapter 253, which grants the Executive Commissioner of HHSC authority to implement Chapter 253, and specifically §253.007, Employee Misconduct Registry, which requires HHSC to establish an employee misconduct registry.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2022.

TRD-202201143
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: April 21, 2022
Proposal publication date: December 24, 2021
For further information, please call: (512) 438-3161

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Texas

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

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 28, Substantive Rules Applicable to Cable and Video Service Providers according to Texas Government Code §2001.039, *Agency Review of Existing Rules.* The text of the rule section will not be published. The text of the rule may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part II, or through the commission's website at www.puc.texas.gov. Project No. 53380 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal a rule adopted by that agency according to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by Texas Government Code §2001.039(e), this review is to assess whether the reason for adopting or readopting the rule continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 28 continue to exist. If it is determined during this review that any section of Chapter 28 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 28 has no effect on the sections as they currently exist.

The rule in Chapter 28 was adopted according to the provisions in Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapter 66, §§66.001-.004 (West 2007 & Supp. 2017) (PURA). Section 28.6 was adopted to establish the certification criteria for a State-Issued Certificate of Franchise Authority (CFA) to provide cable and/or video services in the state and to set forth certain reporting requirements of CFA holders as well.

Interested persons may file comments electronically through the interchange on the commission's website by April 29, 2022. Reply comments may be submitted May 13, 2022. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 53380.

The rule subject to this review is proposed for publication under PURA, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §§66.001-.004.

TRD-202201114
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 31, 2022

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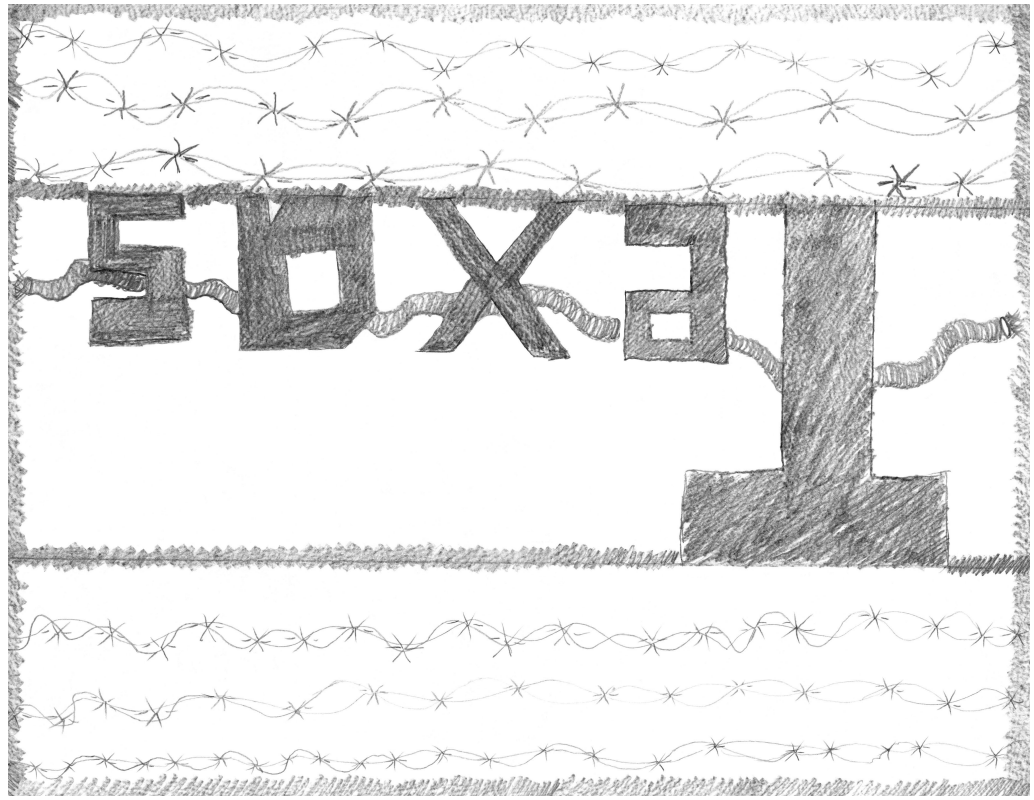

SOXAL

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §299.1(a)(2)

Figure 1. Minimum Dam Heights

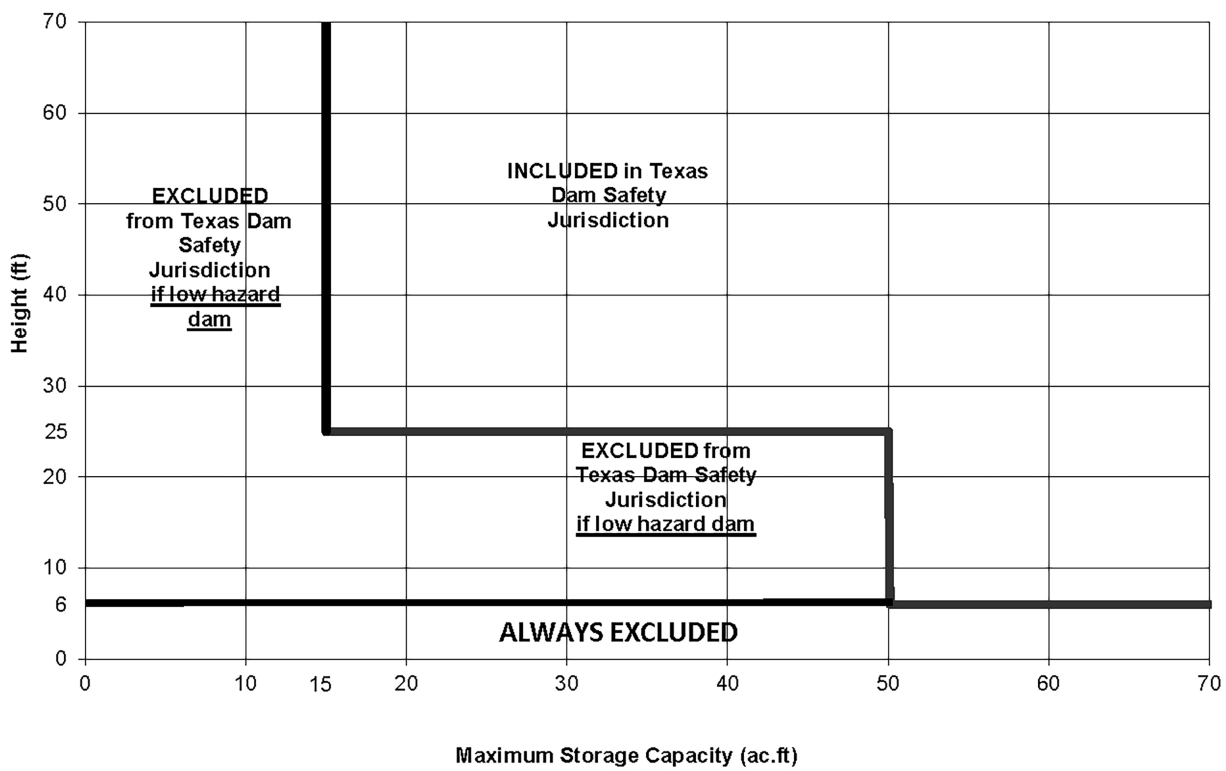


Figure: 43 TAC §21.38(c)(2)

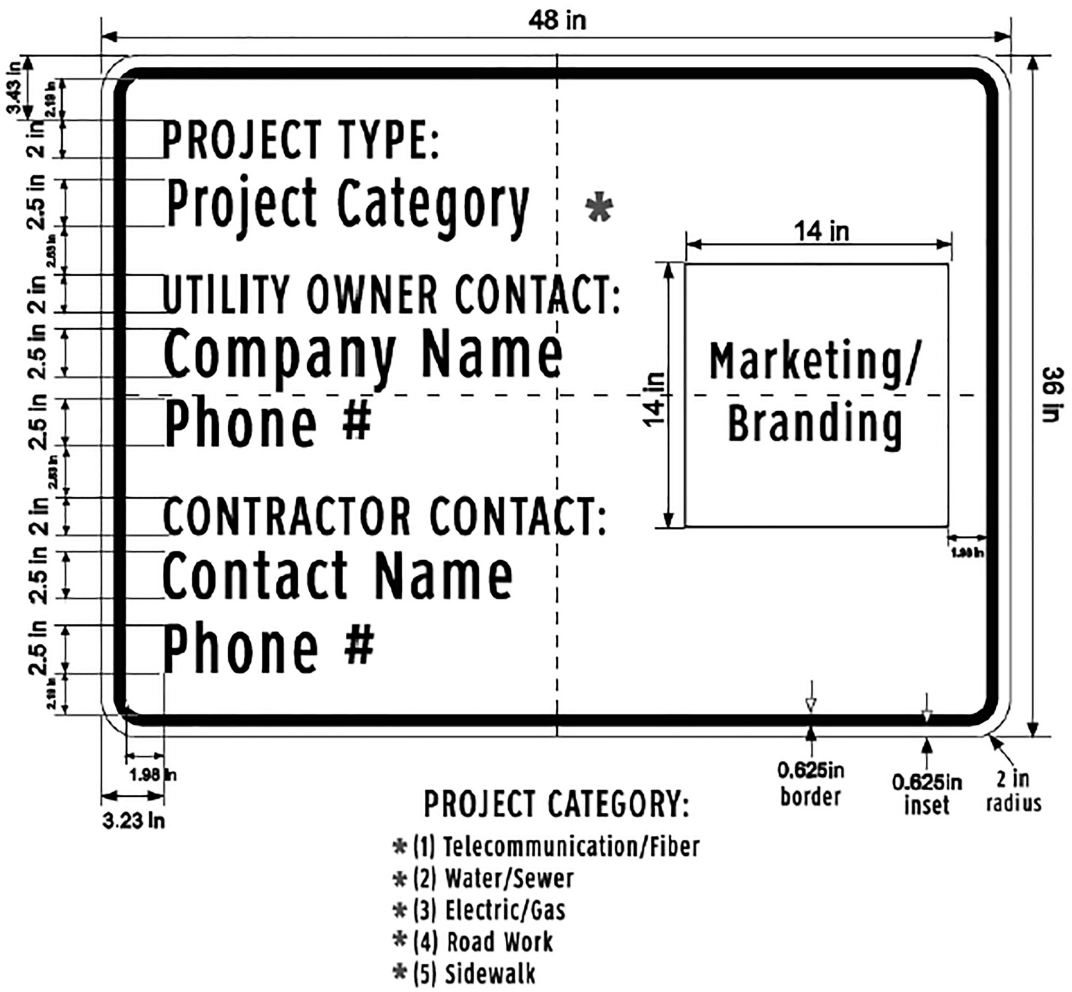


Figure: 43 TAC §21.40(a)(1)

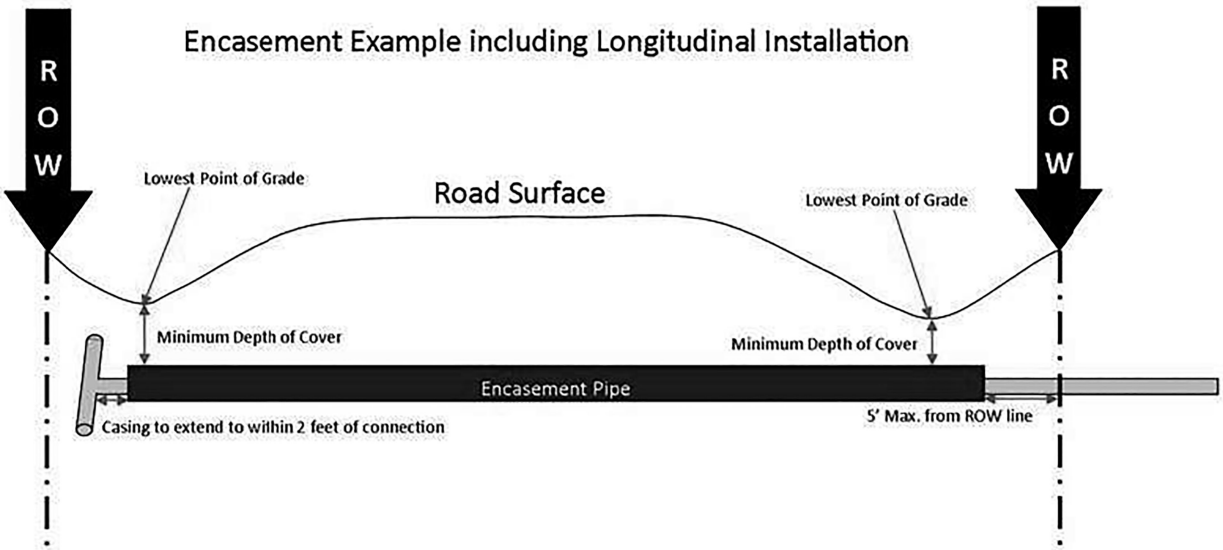


Figure: 43 TAC §21.40(a)(2)(A)

Facility Type	Crossing Encased	Crossing un-encased	Longitudinal[2]	Casing Material (Recommended)
Low Pressure Gas	60	60	48	HDPE or Steel
High Pressure Gas[1]	60	60	48	Steel
Electric	60	NA	48	Any
Communication	60	NA	48	Any
Water	60	NA	36	HDPE
Wastewater gravity flow	30	NA	30	HDPE
Wastewater pressure flow	60	NA	36	HDPE
Other Water	60	NA	36	HDPE
Crossing depth is below lowest point of crossed grade.				
(1) High pressure gas is defined as greater than or equal to 60 psi.				
(2) Additional 12 inches of depth is required within 50 feet of water course, culvert, etc.				

Figure: 43 TAC §21.40(g)(5)

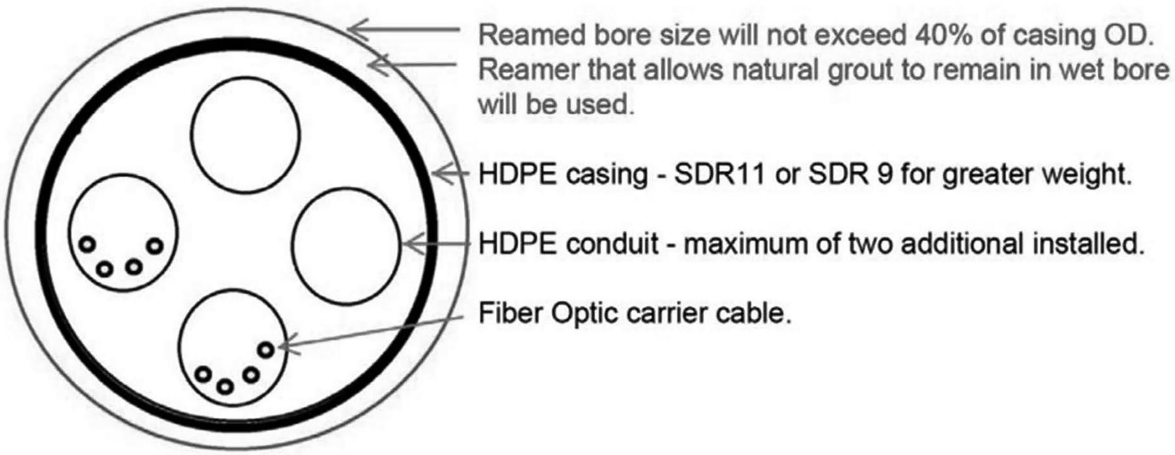
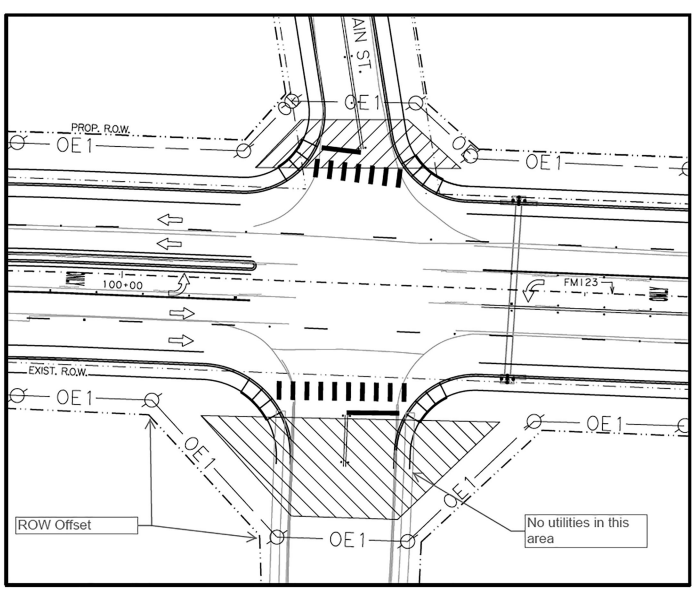


Figure: 43 TAC §21.41(d)(6)



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Health and Safety Code and the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Comal Ag Operation, LLC and Santa Rita Land & Cattle Holdings, Ltd.;* Cause No. D-1-GN-22-001532, in the 419th Judicial District Court, Travis County, Texas.

Background: This is a suit to enforce an administrative order under the statutory jurisdiction of the TCEQ, and to enforce the rules adopted by the TCEQ pursuant to the Tex. Water Code chs. 7 and 26, and Tex. Health & Safety Code ch. 361. Clayton M. Klutts and Brandt C. Klutts owned and operated Comal Ag Operations, LLC, and Santa Rita Land & Cattle Holdings, Ltd. ("Defendants"). The Defendants operated a land application site located at 33 Ranger Creek Road, in Boerne, Texas and ran a beneficial land use (BLU) site consisting of nine land application areas and a "staging area" containing multiple tanks used for receiving, treating, and storing domestic septage and lime slurry located approximately 6,000 feet from the intersection of Youngsford Road and Short Cut Road, in Guadalupe County, Texas (the "Site"). Storm water from the Site drained to Youngs Creek, a tributary of the Guadalupe River. On February 3, 2016, TCEQ issued a land application domestic septage permit to Comal Ag (permit no. 711013). Comal Ag and Santa Rita exceeded the limitations of that permit and failed to abide by a subsequent TCEQ agreed order to bring the Site under attainment. While Comal Ag and Santa Rita have paid the administrative penalty in full, to date it has not complied with the technical requirements of the order.

Proposed Settlement: The parties propose an Agreed Final Judgment which sets forth a permanent injunction, awards the State $12,000 in civil penalties and $4,000 in attorney's fees.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Tyler Ryska, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: Tyler.Ryska@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202201221
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: April 5, 2022

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Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts adopted new 34 TAC §3.276 in the April 8, 2022, issue of the *Texas Register* (47 TexReg 1888). Due to an error by the Texas Register, the incorrect effective date was published for the adoption. The correct effective date for the adoption is April 11, 2022.

TRD-202201235

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/11/22 - 04/17/22 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/11/22 - 04/17/22 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009[3] for the period of 04/01/22 - 04/30/22 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and 303.009 for the period of 04/01/22 - 04/30/22 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-202201266
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 6, 2022

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Deep East Texas Council of Governments

Request for Public Comment on Proposed Changes to the Housing Choice Voucher Administrative Plan and Annual PHA Plan

The Deep East Texas Council of Governments - Regional Housing Authority announces a public comment period for proposed changes to the Housing Choice Voucher Program Administrative Plan and Annual PHA Plan. DETCOG will receive written comments regarding the proposed changes during a 45-day public comment period to commence April 10, 2022, through May 26, 2022.

All written comments are to be mailed or hand-delivered to the following address:

Deep East Texas Council of Governments

Attn: Housing Choice Voucher Program

1405 Kurth Dr, Lufkin, Texas 75904

A copy of the proposed changes to either plan is available on our website at www.dethousing.org and is also available at DETCOG's office located at 1405 Kurth Dr, Lufkin, Texas 75904, between the hours of 8:30 a.m. and 4:30 p.m., Monday - Friday.

The Resident Advisory Board will discuss the proposed changes on Wednesday, April 6, at 11:00 a.m. at the Nehemiah Family Life Center, 640 Pollard St, Jasper, Texas 75951, and again on Thursday, April 7, at 11:00 a.m. at the Abundant Life United Methodist Church, 1715 Sayers, Lufkin, Texas 75904.

The DETCOG Housing Advisory Committee will discuss the proposed changes on Thursday, April 28, 2022, at 11:00 a.m. at the Abundant Life United Methodist Church, 1715 Sayers, Lufkin, Texas 75904.

The Board of Directors Committee for the Deep East Texas Council of Governments will meet on Thursday, May 26, 2022, at 12:00 p.m. at Nacogdoches County Exposition and Civic Center, 3805 NW Stallings Drive, Nacogdoches, Texas 75964, to consider adopting proposed changes to the Administrative Plan and Annual PHA Plan for the Housing Choice Voucher Program.

If you have any questions regarding the proposed policy changes, please call (936) 634-2247 extension 5262.

TRD-202201120
Lonnie Hunt
Executive Director
Deep East Texas Council of Governments
Filed: April 1, 2022

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 16, 2022.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **May 16, 2022.** 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: ARGOS USA LLC; DOCKET NUMBER: 2021-0877-WQ-E; IDENTIFIER: RN107866931; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG112346, Part III, Section A.1, Outfall Numbers 001 and 0002, by failing to comply with permitted effluent limitations; PENALTY: $10,350; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Christine; DOCKET NUMBER: 2021-1140-PWS-E; IDENTIFIER: RN101439701; LOCATION: Christine, Atascosa County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for the wells that are covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher groundwater license; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), and (B)(v), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's storage tank annually; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; PENALTY: $4,250; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Hallsville; DOCKET NUMBER: 2021-1235-PWS-E; IDENTIFIER: RN101383750; LOCATION: Hallsville, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to ensure additional protection was provided at any residence or establishment where an actual or potential contamination hazard exists in the form of an air gap or a backflow prevention assembly, as identified in 30 TAC §290.47(f); 30 TAC §290.45(f)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system of at least 0.43 gallons per minute per connec-

tion, as required by the alternative capacity requirement approved by the Executive Director; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; PENALTY: $2,434; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: City of Roscoe; DOCKET NUMBER: 2019-1683-MSW-E; IDENTIFIER: RN101917581; LOCATION: Roscoe, Nolan County; TYPE OF FACILITY: former wastewater treatment plant; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay outstanding Public Health Service fees, including any associated late fees, for TCEQ Financial Administration Account Number 91770001; 30 TAC §330.15(a) and (c) and TCEQ Agreed Order, Docket Number 2015-0335-MLM-E, Ordering Provision Numbers 2.a.i and 2.b, by failing to not cause, suffer, allow or permit the unauthorized disposal of municipal solid waste; and TWC, §7.101 and TCEQ Agreed Order, Docket Number 2015-0335-MLM-E, Ordering Provision Number 2.c, by failing to close the wastewater treatment storage ponds in accordance with the closure plan approved by the TCEQ on September 16, 2011; PENALTY: $24,900; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $24,900; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: Copano Cove Water Company, Incorporated; DOCKET NUMBER: 2021-1051-PWS-E; IDENTIFIER: RN101237352; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and a minimum of 20 psi during emergencies such as firefighting; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; and 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; PENALTY: $1,876; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Frankston Rural Water Supply Corporation; DOCKET NUMBER: 2021-0716-PWS-E; IDENTIFIER: RN101440857; LOCATION: Frankston, Anderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pastures are not allowed within 50 feet of the facility's Well Number 1 and Well Number 3; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent for the well that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(3)(N), by failing to provide flow-measuring devices for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(e)(4)(B), by failing to properly house the gas chlorine cylinders so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(2), by failing to ensure that the facility's ground storage tank (GST) hatches remain locked except during inspections and maintenance; 30 TAC §290.43(c)(3), by failing to provide an overflow discharge opening on the GST with a gravity-hinged and weighted cover that closes automatically and fits tightly with no gap over 1/16 inch, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances; 30 TAC §290.43(c)(6) and TCEQ Agreed Order, Docket Number 2019-0329-PWS-E, Ordering Provision Number 2.a, by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; 30 TAC §290.43(d)(7), by failing to have all associated appurtenances including valves, pipes and fittings connected to pressure tanks thoroughly tight against leakage; 30 TAC §290.45(b)(1)(D)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more wells having a total capacity of 0.6 gallon per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power that will deliver water at a minimum rate of 0.35 gpm per connection to the distribution system in the event of the loss of normal power supply; 30 TAC §290.46(f)(2) and (3)(A)(i)(II), (iii), (iv), and (vi), (B)(iii) and (v), (D)(ii), and (E)(iv), 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(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities; 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(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $18,616; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Harris County Municipal Utility District Number 49; DOCKET NUMBER: 2021-0236-MWD-E; IDENTIFIER: RN102916376; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011919002, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $17,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $17,187; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Harris County Water Control and Improvement District Number 99; DOCKET NUMBER: 2021-0966-PWS-E; IDENTIFIER: RN102684776; LOCATION: Spring, Harris County; TYPE

OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the wells remain in service; PENALTY: $50; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: JANOOB, INCORPORATED dba Snappy Foods 14; DOCKET NUMBER: 2021-1041-PST-E; IDENTIFIER: RN105011027; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,799; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: LANTERN RV & CABINS INC; DOCKET NUMBER: 2021-1195-PWS-E; IDENTIFIER: RN109164327; LOCATION: Seminole, Gaines County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's public drinking water well into service; PENALTY: $500; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: Red River Authority of Texas; DOCKET NUMBER: 2021-0893-MWD-E; IDENTIFIER: RN101718955; LOCATION: Wichita Falls, Clay County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011445001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $14,625; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: SAAHEL, INCORPORATED dba Snappy Foods 18; DOCKET NUMBER: 2021-1042-PST-E; IDENTIFIER: RN102012465; LOCATION: Portland, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(2)(A) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $8,024; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: SKMD BUSINESS LLC dba Calder Food Mart; DOCKET NUMBER: 2021-1024-PST-E; IDENTIFIER: RN102432291; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(9)(A)(iii) 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, and failing to take appropriate steps to assure that a statistical inventory reconciliation (SIR) analysis report is received from the vendor in no more that 15 calendar days following the last day of the 30-day period for which the SIR analysis is performed; PENALTY: $4,878; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2021-0135-MWD-E; IDENTIFIER: RN102075470; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: $12,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $10,000; ENFORCEMENT COORDINATOR: Ellen Ojeda, (512) 239-2581; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: Williamson-Travis Counties Municipal Utility District 1; DOCKET NUMBER: 2021-0784-WQ-E; IDENTIFIER: RN105624159; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit for a small municipal separate storm sewer system; PENALTY: $938; ENFORCEMENT COORDINATOR: Alyssa Loveday, (512) 239-5504; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202201184
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 5, 2022

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Correction of Error

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in this correction of error are not included in the print version of the Texas Register. The figures are available in the on-line version of the April 15, 2022, issue of the Texas Register.)

In the March 25, 2022, issue of the *Texas Register* (47 TexReg 1588), the Texas Commission on Environmental Quality (commission) proposed amendments to 30 TAC §§307.3, 307.4, and 307.6.

Due to a publication error by the *Texas Register,* the text for 30 TAC §307.3(a)(39) and (86) and §307.6(d)(3)(A) omitted underlining indicating new language to the rules. The figures included in 30 TAC §307.10(1), Appendix A, and 30 TAC §307.10(5), Appendix E, also contained errors in the graphics.

Section 307.4(b)(8) did not contain underlining indicating new language. The error is as submitted by the commission.

The proposed amendments to 30 TAC §§307.3(a)(39) and (86), 307.4(b)(8), and 307.6(d)(3)(A) should read as follows:

§307.3(a)

(39) [~~(38)~~] Method detection limit--The minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is distinguishable from the method blank results [~~greater than zero~~] and is determined from analysis of a sample in a given matrix containing the analyte. The method detection limit is estimated in accordance with 40 Code of Federal Regulations Part 136, Appendix B.

(86) [(84)] Water quality management program--The agency's overall program for attaining and maintaining water quality consistent with state standards, as authorized under the Texas Water Code, the Texas Administrative Code, and the federal Clean Water Act, §§106, 205(j), 208, 303(e) and 314 (33 United States Code, §§1251 *et seq.).*

§307.4(b)

(8) There shall be no discharge of visible pre-production plastic. For the purposes of this paragraph, visible means able to be seen by the naked eye without special equipment. This prohibition applies to individual and general TPDES permit authorizations held by plastic manufacturers, formers/molders, and facilities that otherwise handle pre-production plastic. Facilities that handle pre-production plastic must implement best management practices as defined in §307.3(a)(7) to eliminate discharges of visible pre-production plastic in stormwater through the implementation of control measures such as the following, where determined feasible (list not exclusive): minimizing spills, cleaning up spills promptly and thoroughly, sweeping and/or vacuuming thoroughly, and pellet capturing.

§307.6(d)(3)

(A) Sources for the toxicity factors to calculate criteria were derived from EPA's IRIS database; EPA's *National Recommended Water Quality Criteria: 2002, Human Health Criteria Calculation Matrix* (EPA-822-R-02-012); EPA inputs for calculating the 2015 updated national recommended human health criteria; EPA Health Effects Assessment Summary Tables (HEAST); Assessment Tools for the Evaluation of Risk (ASTER); EPA's QSAR Toxicity Estimation Software Tool, version 4.1; and the computer program, CLOGP3.

TRD-202201273

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Enforcement Orders

An agreed order was adopted regarding Iftkhar Ali dba Food Stop, Docket No. 2019-1020-PST-E on April 5, 2022 assessing $2,626 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ben Warms, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lilbert-Looneyville Water Supply Corporation, Docket No. 2021-0077-PWS-E on April 5, 2022 assessing $3,419 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202201265
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2022

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Notice of Correction to Agreed Order Number 9

In the December 24, 2021, issue of the *Texas Register* (46 TexReg 9114), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 9, for Tippins, Alma E, Docket Number 2021-1548-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2021-1548-OSI-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202201185
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 5, 2022

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Notice of District Petition

Notice issued March 31, 2022

TCEQ Internal Control No. D-02252022-039; SVAG Investments, LLC, a Texas limited liability company, and Willis Waukegan Development, LLC, a Texas limited liability company (Petitioners) filed an amended petition (petition) for creation of Montgomery County Municipal Utility District No. 212 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there is one lienholder, Plains State Bank, on the property to be included in the proposed District and the aforementioned entity has consented to the petition; (3) the proposed District will contain approximately 61.659 acres located within Montgomery County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Cut and Shoot. By Resolution No. 100, passed and adopted on December 9, 2021, the City of Cut and Shoot, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the work proposed to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes and construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and control, abate, and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $15,705,000 (including $11,665,000 for water, wastewater, and drainage plus $3,215,000 for roads and $825,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website 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 website, 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 website at www.tceq.texas.gov.

TRD-202201098
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 31, 2022

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 16, 2022.** 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 May 16, 2022.** 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: KB FOUNDATION OF TEXAS; DOCKET NUMBER: 2019-1493-MWD-E; TCEQ ID NUMBER: RN102179124; LOCATION: 2547 North United States Highway 77, approximately two miles north of the intersection of Farm-to-Market Road 665 and United States Highway 77 near Driscoll, Nueces County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014981001, Operational Requirements Numbers 1 and 9, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §217.33(a) and §305.125(1), and TPDES Permit Number WQ0014981001, Monitoring and Reporting Requirement Number 5, by failing to calibrate as often as necessary to ensure accuracy but not less than annually all automatic flow measuring or recording devices and all totalizing meters for measuring flow; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0014981001, Monitoring and Reporting Requirement Number 1, by failing to timely submit monitoring results at intervals specified in the permit; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0014981001, Monitoring and Reporting Requirement Number 7.c., by failing to report to the TCEQ in writing any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of the noncompliance; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014981001, Effluent Limitation and Monitoring Requirement Number 4, by failing to prevent the discharge of floating solids or visible foam in other than trace amounts; 30 TAC §305.125(1) and TPDES Permit Number WQ0014981001, Other Requirement Number 7, by failing to submit to the TCEQ Wastewater Permitting Section a summary submittal letter in accordance with 30 TAC §217.6(c) as required in the permit; 30 TAC §305.125(1) and TPDES Permit Number WQ0014981001, Other Requirement Number 8, by failing to route the wastewater generated from the restaurant kitchen through a grease trap; 30 TAC §305.125(1) and TPDES Permit Number WQ0014981001, Other Requirement Number 10, by failing to submit quarterly progress reports regarding the repair or construction of treatment units necessary to maintain compliance with effluent limitations for total suspended solids and E. coli; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4) and TPDES Permit Number WQ0014981001, Permit Condition Number 2.d., by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; and 30 TAC §§305.125(1), 319.6, 319.9(d), and 319.11(c), and TPDES Permit Number WQ0014981001, Monitoring and Reporting Requirement Number 2.a., by failing to properly analyze effluent samples according to the permit; PENALTY: $47,138; STAFF ATTORNEY: Jess Robinson, Litigation, MC 175, (512) 239-0455; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(2) COMPANY: SATRAC, INC. dba Budget Rent A Car; DOCKET NUMBER: 2020-1218-PST-E; TCEQ ID NUMBER: RN102457033; LOCATION: 430 Sandau Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing

to provide release detection for the pressurized piping associated with the UST system; and TWC, §26.3475(c)(2) and 30 TAC §334.48(d) and §334.51(a)(6), by failing to maintain spill and overfill prevention equipment in good operating condition; PENALTY: $4,500; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202201212
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 5, 2022

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 16, 2022.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 16, 2022.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Charles Robert Collins; DOCKET NUMBER: 2020-0307-MSW-E; TCEQ ID NUMBER: RN110850930; LOCATION: southwest corner of the intersection of State Highway 12 and County Road 4123, a quarter mile from the Louisiana border, Deweyville, Newton County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,312; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Jimmy Ray Bland; DOCKET NUMBER: 2021-0216-WQ-E; TCEQ ID NUMBER: RN111167656; LOCATION: 13137 South Interstate 35, Valley View, Cooke County; TYPE OF FACILITY: auto crushing and salvage facility; RULES VIOLATED: TWC, §26.121, 30 TAC §281.25(a)(4), and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $3,750; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Spaceage Business Investments Inc; DOCKET NUMBER: 2021-0138-PST-E; TCEQ ID NUMBER: RN102232519; LOCATION: 2431 14th Street, Plano, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(B), by failing to monitor the USTs for releases in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for tanks installed on or after January 1, 2009; PENALTY: $5,280; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202201213
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 5, 2022

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Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill: Proposed Permit No. 62043

Application. PBI International, LLC, P.O. Box 58356, Webster, Texas 77598, has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62043). The proposed development concerns a tract of land of approximately 34.846 acres located at 2122 Genoa Red Bluff Road, Houston, Texas 77034 and consists of an enclosed one-story office/warehouse building, with a total footprint of about 20,000 square feet, and associated driveways, storage and parking areas, and support utilities. The development permit application is available for viewing and copying at Deer Park Public Library, 3009 Center Street, Deer Park, Texas 77536 and may be viewed online at https://www.dropbox.com/sh/vlsq2hhlckekr0m/AADSkMhTP8c8hj6LFNbkgJhNa?dl=0. 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/0LDqnO. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. 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. 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 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.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

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, requests, and petitions must be submitted either electronically at http://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. General information regarding the TCEQ can be found at our website at www.tceq.texas.gov. Further information may also be obtained from PBI International, LLC at the address stated above or by calling Mr. Bryson Hancock at (281) 559-2141.

TRD-202201117
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 1, 2022

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Notice of Public Hearing on Proposed Revision to 30 TAC Chapter 299

The Texas Commission on Environmental Quality (commission) will hold a hybrid in-person and virtual public hearing in Austin on May 17, 2022, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle.

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revision to 30 Texas Administrative Code (TAC) Chapter 299, Dams and Reservoirs, §§299.1, 299.2, and 299.7, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would add language from Senate Bill (SB) 600 87th Texas Legislature (2021), House Bill (HB) 2694 82nd Texas Legislature (2011), and HB 677 83rd Texas Legislature (2013), and make revisions in §§299.1, 299.2, and 299.7 to clarify the language.

The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by May 13, 2022. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on May 16, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTY4NTYwNjktYTM2NC00OGVmLWEwNDUtZWE3NDg2NTk4NDhh%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d&btype=a&role=a

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

Written Comments

Written comments may be submitted to Cecilia Mena, 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 2021-027-299-CE. The comment period closes May 17, 2022. Please choose one of the methods provided to submit your *written* comments.

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 Warren D. Samuelson, Rule Project Manager, Critical Infrastructure Division, (512) 239-5195.

TRD-202201142
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 1, 2022

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Notice of Water Quality Application

The following notice was issued on March 28, 2022

The following notice 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 THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Fort Bend County Municipal Utility District No. 162 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0014564001 to authorize the addition of an Interim

II phase at a daily average flow not to exceed 35,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallon per day. The facility is located at 7102 Koeblen Road, in Fort Bend County, Texas 77469.

TRD-202201118
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 1, 2022

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Notice of Water Quality Application

The following notice was issued on April 4, 2022

The following notice 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 THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ004934000 (EPA I.D. No. TXL005018) issued to City of Corpus Christi to change the description of the disposal facility from 5 ponds to 4 ponds. The existing permit authorizes the surface disposal of water treatment plant residuals products on 36 acres within a 118 acre tract of land. The residuals disposal facility is located 3,230 feet east of the intersection of Interstate Highway 37 and State Highway 77, and 620 feet northeast of the intersection of Sharpsburg Road and Up River Road in Nueces County, Texas 78410.

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 website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202201165
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 4, 2022

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Notice of Water Rights Application

Notices Issued April 05, 2022

APPLICATION NO. 14-1189A; Roger Bernard Glass, 10001 W. Grape Creek Road, San Angelo, Texas 76901, Applicant/Potential Owner, seeks to amend Certificate of Adjudication No. 14-1189 to authorize the maintenance of a dam and 2.8-acre-foot capacity reservoir located on the North Concho River, Colorado River Basin for recreational purposes in Tom Green County. 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. The application was received on March 11, 2020. Additional information and fees were received on March 31, June 22, and September 11, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 25, 2020.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions including, but not limited to providing a means, approved by the Executive Director, to pass inflows downstream of the reservoir when water levels in the North Concho River fall below the top of the constructed dam. The application, technical memoranda, and Executive Director's draft amendment 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 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, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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.

If a hearing request is filed, the Executive Director will not issue the permit and will 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 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 1189 in the search field. 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 website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

APPLICATION NO. 14-1496A; Gardner Family Trust, Jack Garner Gardner, Jr., Gina Gay Gardner, and Lou Zane Gardner Burleson, P.O. Box 207, Junction, Texas 76849, Applicants, have applied to amend their portion of Certificate of Adjudication No. 14-1496 to authorize the maintenance of a dam and reservoir on Maynard Creek, Colorado River Basin, impounding 6.7 acre-feet of water for recreational purposes in Kimble 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 9, 2014. Additional information and fees were received on June 11, June 16, July 16, and August 20, 2014, July 10, 2015, February 3, February 10, March 9, and March 10,

2016, July 25, 2017, and July 12, 2021. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 12, 2017.

The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, streamflow restrictions. The application, technical memoranda, and Executive Director's draft amendment are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk 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, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this 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) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. 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.

If a hearing request is filed, the Executive Director will not issue the permit and will 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 or electronically at https://www14.tceq.texas.gov/epic/eComment/

by entering ADJ 1496 in the search field. 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 website at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202201258
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 5, 2022

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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 March 21, 2022 to April 1, 2022. 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, April 8, 2022. The public comment period for this project will close at 5:00 p.m. on Sunday, May 8, 2022.

FEDERAL AGENCY ACTIONS:

Applicant: Port of West Calhoun

Location: The project site is located in Victoria Barge Canal, at the Union Carbide Canal, at 7501 State Highway 185, in Seadrift, Calhoun County, Texas.

Latitude & Longitude (NAD 83): 28.487842, -96.776668

Project Description: The applicant proposes to discharge 1,600 cubic yards of backfill associated with the construction of a 3,175-linear-foot driven steel sheet pile bulkhead within the Victoria Barge Canal. The applicant is also proposing to mechanically dredge the area in front of the installed bulkhead to a depth of -12 feet mean high tide to remove 3,250 cubic yards of material. The dredged material will be placed as fill behind the constructed bulkhead.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-1997-00034. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 22-1231-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-202201270
Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Filed: April 6, 2022

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking -- Open Educational Resources Grant Program (Texas Public Community Colleges, Universities, State Colleges, and Technical Colleges)

The Texas Higher Education Coordinating Board ("THECB") intends to engage in negotiated rulemaking to amend Chapter 4, Subchapter O, §§4.230-4.233 and 4.236 rules for the Open Educational Resources (OER) Grant Program trusteed funds allocation methodology for Texas public community colleges, universities, state colleges, and technical colleges. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via GovDelivery to all chancellors and presidents at Texas public community colleges, universities, state colleges, and technical colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/campus.

From this effort, 20 individuals responded (out of approximately 159 entities) and expressed an interest to participate or nominated a representative from their system/institution to participate on the negotiated rulemaking committee for Open Educational Resources (OER) Grant Program. The positions held by the volunteers and nominees indicate a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for Open Educational Resources (OER) Grant Program:

1. Public community colleges;

2. Public universities;

3. Public state colleges;

4. Public technical colleges; and

5. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 10 individuals to the negotiated rulemaking committee for Open Educational Resources (OER) Grant Program to represent affected parties and the agency:

Public Community Colleges

Robert J. Exley, President, Alvin Community College

Norma Perez, Vice Chancellor of Instructional Services and Chief Academic Officer, Houston Community College

Elizabeth C. Rodriguez, Dean of Academic Innovation and Technology, Laredo College

Brad Christian, Dean of Arts and Sciences, McLennan Community College

Niki Whiteside, Assistant Vice Chancellor of Instructional Innovation and Support, San Jacinto College

Public Universities

Sarah LeMire, Associate Professor University Libraries, Texas A&M University (Texas A&M University System)

Ariana Santiago, Open Educational Resources Coordinator, University of Houston (University of Houston System)

Jessica McClean, Director of Open Educational Resources, The University of Texas at Arlington (The University of Texas System)

Public State Colleges

Michelle Davis, Department Chair of General Education and Developmental Studies, Lamar State College Port Arthur (Texas State University System)

Texas Higher Education Coordinating Board

Michelle Singh, Assistant Commissioner of Digital Learning

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

TRD-202201271
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Filed: April 6, 2022

♦ ♦ ♦

Texas Department of Housing and Community Affairs

First Amendment to the 2022-1 Multifamily Direct Loan Annual Notice of Funding Availability

The Texas Department of Housing and Community Affairs (the Department) announces the availability of $24,517,494 in HOME Investment Partnerships Program (HOME) and $16,802,481 of national Housing Trust Fund (NHTF) funding for the development of affordable multifamily rental housing for low-income Texans. Applicants under the 2022-1 NOFA will be accepted from December 10, 2021, through October 14, 2022 (if sufficient funds remain).

This first amendment establishes an Application Acceptance Date for certain Applications proposing to be layered with Federal Housing Administration (FHA) insured senior debt and corrects an error in the CHDO set-aside documentation.

Information is available on the Department's web site at http://www.tdhca.state.tx.us/nofa.htm. The NOFA Questions regarding the 2022 Multifamily Direct Loan Annual NOFA may be addressed to LaTisha Turner at mfdl@tdhca.state.tx.us.

TRD-202201145
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 1, 2022

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2400 "$20 MILLION SUPREME"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2400 is "$20 MILLION SUPREME". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2400 shall be $100.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2400.

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: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 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, 51, 52, 53, 54, 55, DIAMOND SYMBOL, $150, $200, $300, $500, $1,000, $10,000, $100,000 and $20,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2400 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
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
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
DIAMOND SYMBOL	WIN$150

$150	ONFF
$200	TOHN
$300	THHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$100,000	100TH
$20,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2400), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 015 within each Pack. The format will be: 2400-0000001-001.

H. Pack - A Pack of the "$20 MILLION SUPREME" Scratch Ticket Game contains 015 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 015 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "$20 MILLION SUPREME" Scratch Ticket Game No. 2400.

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 "$20 MILLION SUPREME" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-seven (67) Play Symbols. BONUS PLAY AREA INSTRUCTIONS: If a player reveals 2 matching prize amounts in the same BONUS, the player wins that amount. $20 MILLION SUPREME PLAY INSTRUCTIONS: 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 "DIAMOND" Play Symbol, the player wins $150 instantly! 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 sixty-seven (67) 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 sixty-seven (67) 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 sixty-seven (67) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the sixty-seven (67) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty"one (31) times.

D. GENERAL: The "DIAMOND" (WIN$150) Play Symbol will never appear in any of the three (3) BONUS play areas.

E. BONUS: A Ticket can win up to one (1) time in each of the three (3) BONUS play areas.

F. BONUS: Winning and Non-Winning Tickets will not contain more than two (2) matching Prize Symbols across the three (3) BONUS play areas, excluding Tickets winning thirty"one (31) times.

G. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

H. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.

I. MAIN PLAY AREA: A Ticket can win up to twenty"eight (28) times in the main play area.

J. MAIN PLAY AREA: All non-winning YOUR NUMBERS Play Symbols will be different.

K. MAIN PLAY AREA: All WINNING NUMBERS Play Symbols will be different.

L. MAIN PLAY AREA: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

M. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

N. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

O. MAIN PLAY AREA: On winning and Non-Winning Tickets, the top cash prizes of $10,000, $100,000 and $20,000,000 will each appear at least once, with respect to other parameters, play action or prize structure.

P. MAIN PLAY AREA: The "DIAMOND" (WIN$150) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. MAIN PLAY AREA: The "DIAMOND" (WIN$150) Play Symbol will never appear on a Non-Winning Ticket.

R. MAIN PLAY AREA: The "DIAMOND" (WIN$150) Play Symbol will win $150 instantly as per the prize structure and will only appear with the $150 Prize Symbol.

S. MAIN PLAY AREA: The "DIAMOND" (WIN$150) Play Symbol will never appear more than one (1) time on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "$20 MILLION SUPREME" Scratch Ticket Game prize of $150, $200, $300 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 $150, $200, $300 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 "$20 MILLION SUPREME" Scratch Ticket Game prize of $1,000, $10,000 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. To claim a "$20 MILLION SUPREME" Scratch Ticket Game top level prize of $20,000,000, the claimant must sign the winning Scratch

Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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 and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). 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.

D. As an alternative method of claiming a "$20 MILLION SUPREME" Scratch Ticket Game prize, with the exception of the top level prize of $20,000,000, the claimant may submit the signed winning Scratch Ticket and a thoroughly completed a 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.

E. 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.

F. 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 "$20 MILLION SUPREME" 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 "$20 MILLION SUPREME" 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 Ticket Prizes. There will be approximately 10,200,000 Scratch Tickets in Scratch Ticket Game No. 2400. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2400 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$150	1,360,000	7.50
$200	680,000	15.00
$300	340,000	30.00
$500	510,000	20.00
$1,000	34,000	300.00
$10,000	250	40,800.00
$100,000	25	408,000.00
$20,000,000	4	2,550,000.00

*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 3.49. 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. 2400 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. 2400, 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-202201162
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 4, 2022

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Texas Parks and Wildlife Department

Notice of a Public Comment Hearing on an Application for a Sand and Gravel Permit

Mark D. Clarke has applied to the Texas Parks and Wildlife Department (TPWD) for a General Permit pursuant to Texas Parks and Wildlife Code, Chapter 86 to remove or disturb up to 400 cubic yards of sedimentary material within the Nueces River in Edwards County. The purpose of the disturbance is to install a casing for an electric river pump for water diversion. The location is approximately 2.18 miles downstream of the River Road crossing and 1.88 miles upstream of the Highway 55 Arnold Crossing. Notice is being published and mailed pursuant to Title 31 TAC §69.105(d).

TPWD will hold a public comment hearing regarding the application at 11:00 a.m. on May 6, 2022. Due to COVID-19 transmission concerns with travelling and person-to-person gatherings, the public comment hearing will be conducted through remote participation. Potential attendees should contact Tom Heger at 512-389-4583 or at tom.heger@tpwd.texas.gov for information on how to participate in the hearing remotely. The hearing is not a contested case hearing under the Texas Administrative Procedure Act. Oral and written public comment will be accepted during the hearing.

Written comments may be submitted directly to TPWD and must be received no later than 30 days after the date of publication of this notice in the *Texas Register* or a newspaper, whichever is later. A written request for a contested case hearing from an applicant or a person with a justiciable interest may also be submitted and must be received by TPWD prior to the close of the public comment period. Timely hearing requests shall be referred to the State Office of Administrative Hearings. Submit written comments, questions, requests to review the application, or requests for a contested case hearing to: Tom Heger,

TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax 512-389-4405; or e-mail tom.heger@tpwd.texas.gov.

TRD-202201161
James Murphy
General Counsel
Texas Parks and Wildlife Department
Filed: April 4, 2022

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 29, 2022, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of The Livingston Telephone Company, LLC to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 53402.

The Livingston Telephone Company, LLC requests a high-cost support adjustment increase of $843,751. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the previous 12 months, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 53402.

TRD-202201095
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: March 30, 2022

♦ ♦ ♦

Supreme Court of Texas

Preliminary Approval of Amendments to Rule 3a of the Texas Rules of Civil Procedure, Rule 1.2 of the Texas Rules of Appellate Procedure, and Rule 10 of the Texas Rules of Judicial Administration (Joint Order, Court of Criminal Appeals Misc. Docket No. 22-002)

Supreme Court of Texas

Misc. Docket No. 22-9026

Preliminary Approval of Amendments to Rule 3a of the Texas Rules of Civil Procedure, Rule 1.2 of the Texas Rules of Appellate Procedure, and Rule 10 of the Texas Rules of Judicial Administration

ORDERED that:

1. The Court invites public comments on the proposed amendments to Texas Rule of Civil Procedure 3a, Texas Rule of Appellate Procedure 1.2, and Texas Rule of Judicial Administration 10 set forth in this Order.

2. The Court requests that comments be submitted in writing to rulescomments@txcourts.gov by September 1, 2022.

3. The Court will issue an order finalizing the amendments after the close of the comment period. The Court may change the amendments in response to public comments. The Court expects the final amendments to take effect on January 1, 2023.

4. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

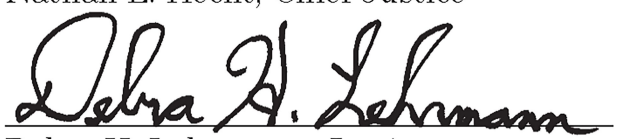
   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

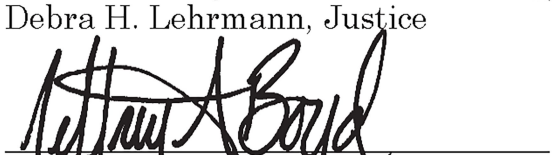
   d. submit a copy of the Order for publication in the *Texas Register*.

Dated: March 30, 2022.

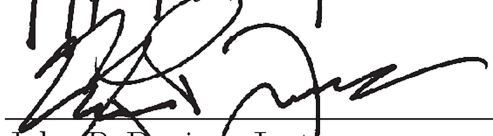
Nathan L. Hecht, Chief Justice



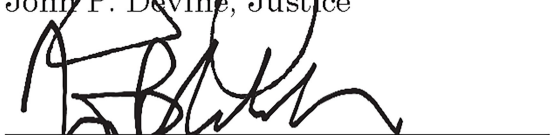
Debra H. Lehrmann, Justice



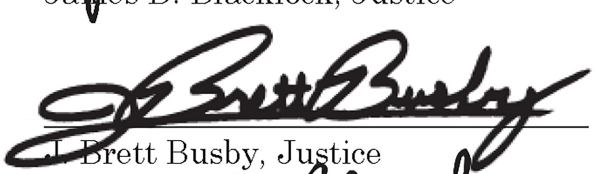
Jeffrey S. Boyd, Justice



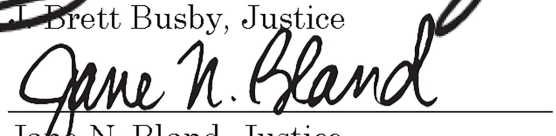
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

Rebeca A. Huddle, Justice

Evan A. Young, Justice

RULE 3a. LOCAL RULES, FORMS, AND STANDING ORDERS

(a) *General Rule.* ~~Each~~An administrative judicial region~~, district court, county court, county court at law, and probate~~ or a court~~,~~ governed by these rules may ~~make and amend~~promulgate local rules, forms, and standing orders that govern~~ing~~ local practice ~~before such courts, provided:~~.

(b) *Relationship with Other Authorities.* Local rules, forms, and standing orders

~~(1) that any proposed rule or amendment shall~~must not be inconsistent with ~~these~~state or federal law, or rules ~~or~~adopted by the Supreme Court of Texas. This requirement extends to any time period provided by these rules. If adopted by a court, local rules, forms, and standing orders must not be inconsistent with any rule of the administrative judicial region in which the court is located~~;~~.

~~(2) no time period provided by these rules may be altered by local rules;~~

~~(3) any proposed local rule or amendment shall not become effective until it is submitted and approved by the Supreme Court of Texas;~~

~~(4) any proposed local rule or amendment shall not become effective until at least thirty days after its publication in a manner reasonably calculated to bring it to the attention of attorneys practicing before the court or courts for which it is made;~~

~~(5) all local rules or amendments adopted and approved in accordance herewith are made available upon request to members of the bar;~~

~~(6) no local rule, order, or practice of any court, other than local rules and amendments which fully comply with all requirements of this Rule 3a, shall ever be applied to determine the merits of any matter.~~

(c) *Publication Required.* To be effective, local rules, forms, and standing orders must be published on the Office of Court Administration's website.

Notes and Comments

Comment to 1990 change: To make Texas Rules of Civil Procedure timetables mandatory and to preclude use of unpublished local rules or other "standing" orders to local practices to determine issues of substantive merit.

Comment to 2022 change: Rule 3a is amended to remove the requirement that the Supreme Court of Texas approve local rules and to expressly address local forms and standing orders. The amended rule provides that local rules, forms, and standing orders must not conflict with other laws or rules and that they are not effective unless published on the Office of Court Administration's website. Section 74.093(b) of the Texas Government Code imposes additional requirements for local rules.

Texas Rules of Civil Procedure (CLEAN VERSION)

RULE 3A. LOCAL RULES, FORMS, AND STANDING ORDERS

(a) *General Rule.* An administrative judicial region or a court governed by these rules may make local rules, forms, and standing orders that govern local practice.

(b) *Relationship with Other Authorities.* Local rules, forms, and standing orders must not be inconsistent with state or federal law, or rules adopted by the Supreme Court of Texas. This requirement extends to any time period provided by these rules. If adopted by a court, local rules, forms, and standing orders must not be inconsistent with any rule of the administrative judicial region in which the court is located.

(c) *Publication Required.* To be effective, local rules, forms, and standing orders must be published on the Office of Court Administration's website.

Notes and Comments

Comment to 1990 change: To make Texas Rules of Civil Procedure timetables mandatory and to preclude use of unpublished local rules or other "standing" orders to local practices to determine issues of substantive merit.

Comment to 2022 change: Rule 3a is amended to remove the requirement that the Supreme Court of Texas approve local rules and to expressly address local forms and standing orders. The amended rule provides that local rules, forms, and standing orders must not conflict with other laws or rules and that they are not effective unless published on the Office of Court Administration's website. Section 74.093(b) of the Texas Government Code imposes additional requirements for local rules.

Texas Rules of Appellate Procedure (REDLINE VERSION)

Rule 1. Scope of Rule; Local Rules of Courts of Appeals

1.1. Scope

These rules govern procedure in appellate courts and before appellate judges and post-trial procedure in trial courts in criminal cases.

1.2. Local Rules and Forms

(a) *Promulgation*. A court of appeals may promulgate rules and forms governing its practice that are not inconsistent with ~~these~~state or federal law, or rules adopted by the Supreme Court or the Court of Criminal Appeals. ~~Local rules governing civil cases must first be approved by the Supreme Court. Local rules governing criminal cases must first be approved by the Court of Criminal Appeals.~~To be effective, local rules and forms must be published on the Office of Court Administration's website.

~~(b) *Copies*. The clerk must provide a copy of the court's local rules to anyone who requests it.~~

(~~e~~b) *Party's Noncompliance*. A court must not dismiss an appeal ~~for noncompliance~~due to a party's failure to comply with a local rule or form without giving the noncomplying party notice and a reasonable opportunity to cure the noncompliance.

Notes and Comments

Comment to 1997 change: Subdivision 1.1 is simplified without substantive change. Subdivision 1.2 is amended to make clear that any person is entitled to a copy of local rules. Paragraph 1.2(c), restricting dismissal of a case for noncompliance with a local rule, is added.

Comment to 2022 change: Rule 1.2 is amended to remove the requirement that the Supreme Court of Texas and Court of Criminal Appeals approve local rules and to expressly address local forms. The amended rule provides that local rules and forms must not conflict with other laws or rules and that they are not effective unless published on the Office of Court Administration's website.

Texas Rules of Appellate Procedure (CLEAN VERSION)

Rule 1. Scope of Rule; Local Rules of Courts of Appeals

1.1. Scope

These rules govern procedure in appellate courts and before appellate judges and post-trial procedure in trial courts in criminal cases.

1.2. Local Rules and Forms

(a) *Promulgation.* A court of appeals may promulgate rules and forms governing its practice that are not inconsistent with state or federal law, or rules adopted by the Supreme Court or the Court of Criminal Appeals. To be effective, local rules and forms must be published on the Office of Court Administration's website.

(b) *Party's Noncompliance.* A court must not dismiss an appeal due to a party's failure to comply with a local rule or form without giving the noncomplying party notice and a reasonable opportunity to cure the noncompliance.

Notes and Comments

Comment to 1997 change: Subdivision 1.1 is simplified without substantive change. Subdivision 1.2 is amended to make clear that any person is entitled to a copy of local rules. Paragraph 1.2(c), restricting dismissal of a case for noncompliance with a local rule, is added.

Comment to 2022 change: Rule 1.2 is amended to remove the requirement that the Supreme Court of Texas and Court of Criminal Appeals approve local rules and to expressly address local forms. The amended rule provides that local rules and forms must not conflict with other laws or rules and that they are not effective unless published on the Office of Court Administration's website.

Rule 10. Local Rules, Forms, and Standing Orders.

~~The local rules adopted by the courts of each county shall conform to all provisions of state and administrative region rules. If approved by the Supreme Court pursuant to Rule 3a, T.R.C.P., the local rules shall be published and available to the Bar and public, and shall include the following:~~

(a) *General Rule.* Local rules, forms, and standing orders must not be inconsistent with other laws or rules and must be published on the Office of Court Administration's website, as required by Rule 3a of the Texas Rules of Civil Procedure and Rule 1.2 of the Texas Rules of Appellate Procedure.

~~a.~~(b) *Multi-Court Counties.* In multi-court counties having two or more court divisions, each division must adopt a single set of local rules, forms, and standing orders ~~which shall~~that govern all courts in the division.

(c) *Local Rule Contents.* Local rules must include:

~~b.~~ (1) ~~P~~provisions for fair distribution of the caseload among the judges in the county~~.~~;

~~c. Provisions to ensure uniformity of forms to be used by the courts under Rules 165a and 166, T.R.C.P.~~

~~d.~~ (2) ~~D~~designation of the responsibility for emergency and special matters~~.~~;

~~e.~~ (3) ~~P~~plans for judicial vacation, sick leave, attendance at educational programs, and similar matters~~.~~; and

(4) any other content required by Section 74.093(b) of the Government Code.

(d) *Format.* Local rules, forms, and standing orders must be submitted in a format specified by the Office of Court Administration.

(e) *Presiding Judge Authority.* The presiding judge of an administrative judicial region may direct a court in the region to amend or withdraw a local rule, form, or standing order if the presiding judge determines that the rule fails to comply with Rule 3a of the Texas Rules of Civil Procedure or that it is unfair or unduly burdensome.

(f) *Supreme Court Authority*. The Supreme Court may direct a court to amend or withdraw a local rule, form, or standing order if the Supreme Court determines that the rule fails to comply with Rule 3a of the Texas Rules of Civil Procedure or Rule 1.2 of the Texas Rules of Appellate Procedure or that it is unfair or unduly burdensome.

Comment to 2022 change: Rule 10 is amended to implement the changes to Texas Rule of Civil Procedure 3a and Texas Rule of Appellate Procedure 1.2. Paragraphs (e) and (f) expressly authorize the regional presiding judges and the Supreme Court to direct changes to or the repeal of local rules, forms, and standing orders.

Texas Rules of Judicial Administration (CLEAN VERSON)

Rule 10. Local Rules, Forms, and Standing Orders.

(a) *General Rule*. Local rules, forms, and standing orders must not be inconsistent with other laws or rules and must be published on the Office of Court Administration's website, as required by Rule 3a of the Texas Rules of Civil Procedure and Rule 1.2 of the Texas Rules of Appellate Procedure.

(b) *Multi-Court Counties*. In multi-court counties having two or more court divisions, each division must adopt a single set of local rules, forms, and standing orders that govern all courts in the division.

(c) *Local Rule Contents*. Local rules must include:

(1) provisions for fair distribution of the caseload among the judges in the county;

(2) designation of the responsibility for emergency and special matters;

(3) plans for judicial vacation, sick leave, attendance at educational programs, and similar matters; and

(4) any other content required by Section 74.093(b) of the Government Code.

(d) *Format*. Local rules, forms, and standing orders must be submitted in a format specified by the Office of Court Administration.

(e) *Presiding Judge Authority*. The presiding judge of an administrative judicial region may direct a court in the region to amend or withdraw a local rule, form, or standing order if the presiding judge determines that the rule fails to comply with Rule 3a of the Texas Rules of Civil Procedure or that it is unfair or unduly burdensome.

(f) *Supreme Court Authority*. The Supreme Court may direct a court to amend or withdraw a local rule, form, or standing order if the Supreme Court determines that the rule fails to comply with Rule 3a of the Texas Rules of Civil Procedure or Rule 1.2 of the Texas Rules of Appellate Procedure or that it is unfair or unduly burdensome.

Comment to 2022 change: Rule 10 is amended to implement the changes to Texas Rule of Civil Procedure 3a and Texas Rule of Appellate Procedure 1.2. Paragraphs (e) and (f) expressly authorize the regional presiding judges and the Supreme Court to direct changes to or the repeal of local rules, forms, and standing orders.

TRD-202201094
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: March 30, 2022

♦ ♦ ♦

Texas Department of Transportation

Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department), may enter into, in each state fiscal biennium, up to six design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $150 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code § 223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register*. Pursuant to the enabling legislation, the Texas Transportation Commission (Commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the rules). The enabling legislation, as well as the rules, govern the submission and processing of qualifications statements, and provide for the issuance of a request for qualifications that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The Commission has authorized the issuance of a request for qualifications (RFQ) to design, construct, and potentially maintain the I-35 Northeast Expansion (NEX) South Project (Project) in Bexar County, Texas. The Project consists of approximately 4 miles of non-tolled improvements along I-35 from approximately I-410 South to I-410 North, including transitions along I-35 from Petroleum Drive to I-410 South, and along the portion of I-410 South from the I-35/I-410 South Interchange to 0.3 miles north of Seguin Road/FM 78, in Bexar County. The improvements will include the construction of additional elevated mainlanes comprised of two General Purpose (GP) lanes and one High Occupancy Vehicle (HOV) lane in each direction; two additional direct connectors at the I-35/I-410 South interchange to connect I-410 to the I-35 elevated lanes; and connection to the elevated lanes and direct connectors at the I-35/I-410 North interchange being constructed as part of the I-35 NEX Central project.

The Project has an estimated design-build cost of approximately $630 million.

Through this notice, the department is seeking qualifications statements (QSs) from teams interested in entering into a design-build contract and, potentially, a capital maintenance contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract and, potentially, a capital maintenance contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ, on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and evaluating the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract and, potentially, a capital maintenance contract for the Project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: project qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on April 15, 2022. The RFQ will be available at the following website:

https://www.txdot.gov/inside-txdot/division/alternative-delivery/i35-nex-south/rfq.html

QSs will be due by 12:00 p.m. (noon) CT on July 6, 2022, at the address specified in the RFQ.

TRD-202201164
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: April 4, 2022

♦ ♦ ♦

Texas Water Development Board

Applications Received Jan-Mar 2022

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73927 a request from Hays County, 712 S. Stagecoach Trail, San Marcos, Texas 78666, received on March 15, 2022, for $17,500,000 in financing from the Clean Water State Revolving Fund for a water quality protection land acquisition program project.

Project ID #62856 a request from the City of San Angelo, 72 West College Avenue, San Angelo, Texas 76903, received on March 18, 2022, for $13,415,000 in financing from the Texas Water Development Fund for the Hickory Aquifer Wellfield Phase II project.

Project ID #62930 a request from Tri-Try Water Supply Corporation, P.O. Box 255, Aspermont, Texas 79502-0255, received on March 18, 2022, for $300,000 in financing from the Drinking Water State Revolving Fund for water system improvements project.

Project ID #62928 a request from the City of Rising Star, 201 West College Street, Rising Star, Texas 76471, received on March 18, 2022, for $300,000 in financing from the Drinking Water State Revolving Fund for water system improvements project.

Project ID #62929 a request from the City of Melvin, P.O. Box 777, Melvin, Texas 76858-0777, received on March 19, 2022, for $300,000 in financing from the Drinking Water State Revolving Fund a water distribution improvements project.

Project ID #62931 a request from the City of Daisetta, 4108 Main Street, Daisetta, Texas 77533, received on March 25, 2022, for $2,375,000 in financing from the Drinking Water State Revolving Fund for a water well project.

Project ID #73928 a request from the City of Marble Falls, 800 3rd Street, Marble Falls, Texas 78654, received on March 25, 2022, for $4,300,000 in financing from the Clean Water State Revolving Fund for the Purple Pipe System Extension project.

Project ID #73929 a request from the City of Mertzon, 104 South Park View, Mertzon, Texas 76941, received on March 25, 2022, for $4,665,000 in financing from the Clean Water State Revolving Fund for a wastewater system improvement project.

Project ID #62834 a request from the City of Paint Rock, 130 West Moss Street, Paint Rock, Texas 76866, received on March 26, 2022, for $300,000 in financing from the Drinking Water State Revolving Fund for distribution line improvements project.

Project ID #73930 a request from the City of Primera, 22893 Stuart Place Road, Harlingen, Texas 78552, received on March 26, 2022, for $6,078,000 in financing from the Clean Water State Revolving Fund for a lift station improvements project.

Project ID #62932 a request from the City of Donna, 307 South 12th Street, Donna, Texas 78537, received on March 26, 2022, for $1,647,414 in financing from the Drinking Water State Revolving Fund for an interconnect project.

Project ID #73931 a request from the City of Edinburg, 415 West University Drive, Edinburg, Texas 78539, received on March 28, 2022, for $44,000,000 in financing from the Clean Water State Revolving Fund for a wastewater treatment 20 year improvements project.

TRD-202201264
Ashley Harden
General Counsel
Texas Water Development Board
Filed: April 6, 2022

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 47 (2022) is cited as follows: 47 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 "47 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 47 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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