# TEXAS REGISTER

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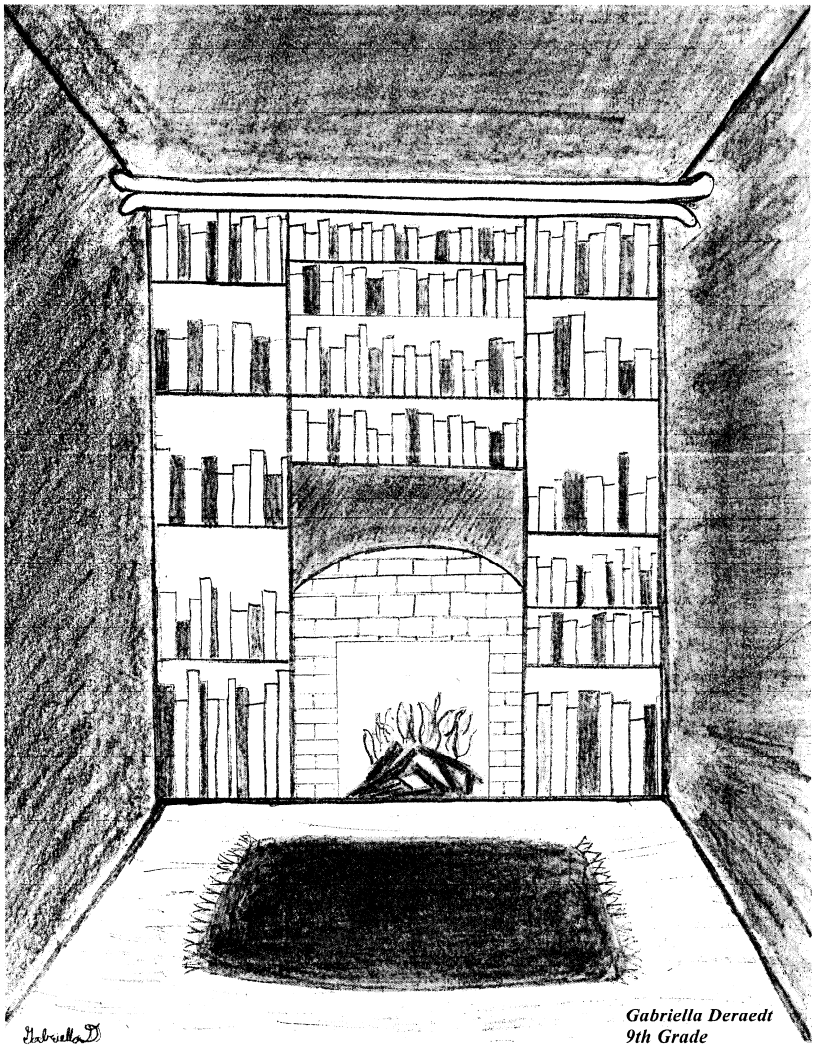

*Gabriella Deraedt*
*9th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register*.

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# In This Issue

## IN ADDITION

### Texas Department of Banking



### Capital Area Rural Transportation System



### Office of Consumer Credit Commissioner



### Credit Union Department



### Texas Education Agency



### Texas Commission on Environmental Quality



### Texas Ethics Commission



### Texas Health and Human Services Commission



### North Central Texas Council of Governments



### Public Utility Commission of Texas



### Texas Department of Transportation

# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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

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

# TITLE 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 30. COMMUNITY DEVELOPMENT

### SUBCHAPTER B. STATE OFFICE OF RURAL HEALTH

### DIVISION 7. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

**4 TAC §30.242**

The Texas Department of Agriculture (Department) proposes amendments to Title 4, Part 1, Subchapter B, Division 7, §30.242, relating to the selection of grant applicants for the Rural Communities Health Care Investment Program. The amendments clarify the roll of advisors to the application process, and funding eligibility requirements.

The proposed amendments to §30.242 give the Department the discretion to consult advisors regarding applications for grant funding. The proposed amendments also remove the restriction which limits the number of grant awards that may be received by a health professional. Health professionals who have received an award in the past and who have since furthered their education to attain a different or more advanced license in a health care profession will be eligible to apply for additional grant funding.

Trent Engledow, Director of State Office of Rural Health, has determined that for each year of the first five years the proposed rule is in effect, there will be no state or fiscal impact as a result of implementing the proposal.

The public benefit anticipated as a result of administering the proposed rule will be the increased recruitment and retention of advanced health care practitioners in medically underserved communities. There will be no adverse economic effect on micro-businesses, small businesses or individuals.

Mr. Engledow has provided the following information related to the government growth impact statement, as required pursuant to Texas Government Code, §2001.021. As a result of implementing the proposal, for the first five years the proposed rules are in effect, there will be:

1. no creation or elimination of a government program;

2. no creation or elimination of employee positions;

3. no increase or decrease in future legislative appropriations to the Department;

4. no increase or decrease in fees paid to the Department;

5. no new, expanded or limited regulations;

6. no increase or decrease to the number of individuals subject to the proposal because health professionals and eligible applicants are currently subject to compliance with program rules set forth in this Subchapter B, Division 7; and

7. no economic impact upon this state's economy.

Mr. Engledow has determined that the public benefit anticipated as a result of implementing the proposed amendments will be the increased recruitment and retention of advanced health care practitioners in medically underserved communities.

Written comments on the proposal may be submitted for 30 days following publication of this proposal to Trent Engledow, State Office of Rural Health, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to *Trent.Engledow@TexasAgriculture.gov.*

The proposal is made under Texas Government Code, Chapter 487, Subchapter M, which provides the Department with the authority to administer programs supporting rural health in this state, namely the Rural Communities Health Care Investment Program, and §487.556, which provides authority for the Department to adopt rules as necessary to implement Chapter 487, Subchapter M.

The code affected by the proposal is Texas Government Code Chapter 487.

*§30.242. Application Review and Selection Criteria.*

(a) (No change.)

(b) If needed, the [~~The~~] department may invite advisors from outside the department to evaluate eligible applications. Advisors from outside the department shall receive no compensation or reimbursement for expenses. Advisors may not be a current or potential applicant for a grant on which the advisors would be making recommendations.

(c) - (e) (No change.)

[~~(f) Health professionals selected for funding may only receive a one-time award of assistance.~~]

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 November 14, 2017.

TRD-201704582

Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 463-4075

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# TITLE 22. EXAMINING BOARDS

## PART 11. TEXAS BOARD OF NURSING

### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

**22 TAC §217.9**

Introduction

The Texas Board of Nursing (Board) proposes amendments to §217.9, concerning *Inactive and Retired Status.* The amendments are proposed under the authority of the Occupations Code §301.155 and related §301.261 and clarify that a nurse whose license is in "retired" status may not engage in the practice of nursing. While a volunteer retired nurse may practice nursing in compliance with the limitations of §217.9(e), a nurse whose license is in "retired" status may not. To the extent the current text of the subsection is unclear in this regard, the proposed amendments clarify this existing restriction.

Section by Section Overview

The current rule text provides that a nurse whose license is in "retired" status may not practice as a nurse for monetary or non-monetary benefits. The proposed amendments eliminate all reference to compensation because a retired nurse may not practice nursing at all. The current rule text may cause confusion and ambiguity regarding this existing restriction. As such, the proposed amendments clarify that a retired nurse many not practice nursing.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the elimination of confusing language from the text of the rule and the adoption of rule text that is easily understandable.

There are no anticipated costs of compliance with the proposal, as the proposed amendments do not implement new requirements or restrictions; the amendments merely clarify the existing restriction in the current rule text. Thus, the Board does not anticipate that licensees will alter their compliance with the rule based on the proposed amendments. Further, because there are no anticipated costs associated with the adoption of this proposal, the Board is not required to comply with the requirements of Tex. Gov't Code. §2001.0045.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendments will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendments because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Tex. Admin. Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) implementation of the proposal does not require the creation of new employee positions or the elimination of existing employee positions, as the proposal clarifies the existing restriction in the rule and does not create new restrictions or requirements; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board, as the proposal clarifies the existing restriction in the rule and does not create new restrictions or requirements; (iv) the proposal does not require an increase or decrease in fees paid to the Board; (v) the proposal does not create a new regulation; it merely clarifies an existing restriction; (vi) the proposal does not expand, limit, or repeal an existing regulation; (vii) the proposal does not increase or decrease the number of individuals subject to the rule 's applicability; and (viii) the proposal does not have an effect on the state's economy. Because the proposal clarifies an existing restriction and does not create new requirements, the Board does not anticipate an overall effect on licensees.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on December 31, 2017, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151 and related §301.261.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.261(a) provides that the Board may place on inactive status the license of a person under Chapter 301 who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the Board in the form and manner determined by the Board. The inactive status begins on the expiration date of the person's license.

Section 301.261(b) provides that the Board shall maintain a list of each person whose license is on inactive status.

Section 301.261(c) provides that a person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

Section 301.261(d) provides that the Board shall remove a person's license from inactive status if the person requests that the Board remove the person's license from inactive status; pays each appropriate fee; and meets the requirements determined by the Board.

Section 301.261(e) provides that the Board, by rule, shall permit a person whose license is on inactive status and who was in good standing with the Board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the Board.

Cross Reference To Statute. The following statutes are affected by this proposal: Rule Statute §217.9 §301.151 and §301.261.

*§217.9. Inactive and Retired Status.*

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

(d) A nurse whose license is in "retired" status may not practice as a nurse [~~for compensation (monetary or non-monetary benefits)~~].

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

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

Filed with the Office of the Secretary of State on November 17, 2017.

TRD-201704692
Jena Abel
Deputy General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 305-6822

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# PART 23. TEXAS REAL ESTATE COMMISSION

## CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

### 22 TAC §535.52

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.52, Moral Character Requirements for Individual Applicant, in Chapter 535, General Provisions.

The proposed amendments to §535.52, clarify that violating the terms of an administrative order by the Commission or any other governmental body tends to indicate that the applicant does not possess the honesty, trustworthiness or integrity to hold a real estate license.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no significant anticipated impact on small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity of licensure requirements for applicants.

For each year of the first five years the proposed amendments are in effect the amendments will not:

• create or eliminate a government program;

• require the creation of new employee positions or the elimination of existing employee positions;

• require an increase or decrease in future legislative appropriations to the agency;

• require an increase or decrease in fees paid to the agency;

• create a new regulation;

• expand, limit or repeal an existing regulation;

• increase or decrease the number of individuals subject to the rule's applicability; or

• positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

*§535.52. Moral Character Requirements for Individual Applicant.*

(a) (No change.)

(b) Conduct that tends to demonstrate that an applicant does not possess the requisite honesty, trustworthiness or integrity includes, but is not limited to:

(1) a plea of guilty or nolo contendere to or a conviction of any offense listed in §541.1 of this title (relating to Criminal Offense Guidelines);

(2) failing to successfully or satisfactorily complete any term or condition of parole, supervised release, probation, or community supervision;

(3) providing false or misleading information to the Commission;

(4) disciplinary action taken against, or the surrender of, any [~~other~~] professional or occupational license or registration, in this or any other state;

(5) engaging in activities for which a license or registration is required without having the legal authorization to do so, in this or any other state;

(6) violating any provision of the Act;

(7) violating any provision of the rules of the Commission;

(8) failing to pay a judgment (including any court-ordered costs, fees, penalties, or damages), that is not otherwise discharged in bankruptcy;

(9) failing to provide information or documentation related to moral character requirements not later than the 60th day after the date the Commission sends a written request to an applicant; and

(10) failing to comply with any term of an administrative order issued by this state, any other state, or the federal government.

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 November 16, 2017.

TRD-201704669
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 936-3092

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## SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

### 22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses, in Chapter 535, General Provisions.

The proposed amendments to §535.65 implement changes made to Chapter 53 of the Texas Occupations Code in HB 1508, adopted by the 85th Legislature effective September 1, 2017. These changes require education providers to notify potential students before they enroll in an occupational licensing education program that a criminal history may make them ineligible for the license they seek and that they have a right to request a criminal history evaluation from the licensing authority. The statutory changes also provide authority for licensing agencies to order reimbursements be paid to the student if the provider fails to give the required notices. In addition, subsection (h)(1) is amended to clarify that all final examinations are to be closed book examinations. This change was recommended by the Commission's Education Standards Advisory Committee.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no significant anticipated impact on small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity about the process for education providers and to better prepared students for licensing examinations.

For each year of the first five years the proposed amendments are in effect the amendments will not:

• create or eliminate a government program;

• require the creation of new employee positions or the elimination of existing employee positions;

• require an increase or decrease in future legislative appropriations to the agency;

• require an increase or decrease in fees paid to the agency;

• create a new regulation;

• expand, limit or repeal an existing regulation;

• increase or decrease the number of individuals subject to the rule's applicability;

• positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

*§535.65. Responsibilities and Operations of Providers of Qualifying Courses.*

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) maintaining student attendance records and pre-enrollment agreements;

(C) verifying instructor qualification, performance and attendance;

(D) proper examination administration;

(E) validation of student identity acceptable to the Commission;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c);

(H) ensuring that instructors or other persons do not recruit or solicit prospective sales agents, brokers or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) - (c) (No change.)

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; [~~and~~]

(F) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and[~~.~~]

(G) the notices regarding potential ineligibility for a license based on criminal history required by Section 53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(4) If a provider fails to give the notice required by subsection (d)(1)(G), and an individual's application for a license is denied by the Commission because the individual has been convicted of a criminal offense, the provider shall reimburse the individual the amounts required by Section 53.153, Texas Occupations Code.

(f) - (g) (No change.)

(h) Course examinations.

(1) The final examination given at the end of each course must be given in a form and with questions that were submitted to the Commission with the course approval form. All final examinations must be closed booked.

(2) Final examination questions must be kept confidential and be significantly different from any quizzes and exercises used in the course.

(3) A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4) A provider must rotate all versions of the examination required by §535.62(b)(7) throughout the approval period for a course in a manner acceptable to the Commission and examinations must:

(A) require an unweighted passing score of 70%; and

(B) be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who:

*(i)* is present at the test site or able to monitor the student through the use of technology acceptable to the Commission; and

*(ii)* has positively identified that the student taking the examination is the student registered for and who took the course.

(5) The following are acceptable third party proctors:

(A) employees at official testing or learning/tutoring centers;

(B) librarians at a school, university, or public library;

(C) college or university administrators, faculty, or academic advisors;

(D) clergy who are affiliated with a specific temple, synagogue, mosque, or church; and

(E) educational officers of a military installation or correctional facility.

(6) A provider may not give credit to a student who fails a final examination and a subsequent final examination as provided for in subsection (i) of this section.

(i) - (m) (No change.)

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

Filed with the Office of the Secretary of State on November 16, 2017.

TRD-201704666

Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 936-3092

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# CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

## 22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.55, 537.56

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§537.20, Standard Contract Form TREC No. 9-12; §537.28, Standard Contract Form TREC No. 20-13; §537.30, Standard Contract Form TREC No. 23-14; §537.31, Standard Contract Form TREC No. 24-14; §537.32, Standard Contract Form TREC No. 25-11; §537.37, Standard Contract Form TREC No. 30-12; new §537.55, Standard Contract Form TREC No. 48-0 and new §537.56, Standard Contract Form TREC No. 49-0, in Chapter 537, Professional Agreements and Standard Contracts.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

The Broker Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments and new rules to Chapter 537 to address issues that have arisen since the last contract revisions.

The changes listed below apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale).*

Paragraph 2 is amended to clarify that any reservations of mineral rights must be done in a separate addendum.

Paragraph 5 is amended to require Earnest Money to be delivered within 3 days of the Effective Date. If the 3rd day falls on a Saturday, Sunday or legal holiday, the earnest money is due on the next day that is not a Saturday, Sunday or legal holiday. Seller may terminate the contract if buyer fails to timely deliver the Earnest Money and time is made of the essence for this paragraph.

"Effective Date" is made a defined term throughout the contracts but is still tied to the final date of acceptance provided on the signature page.

Paragraph 6A(9) is amended to include an exception for minerals as approved by the Texas Department of Insurance.

Paragraph 6B the phrase "due to factors beyond Seller's control" is removed from the sentence allowing Buyer to terminate the contract if the Commitment and Exception documents are not timely received.

Paragraph 6D is amended to define the time by which seller is to cure objections as the "Cure Period", provide a specific time frame by which the buyer must notify the seller that the buyer will terminate or waive the objections if the objections are not cured within the Cured Period, and address additional time periods for the buyer to object and the seller to cure if a revised commitment, revised survey, or updated exception documents are provided.

Paragraph 20 is amended to clarify what is meant by "applicable law" and an "affidavit" when seller is a "foreign person."

The space for fax numbers were removed from the Broker Information page and a space for phone numbers for the brokers were added.

Separate receipt boxes were added to the forms for Earnest Money, the Contract and Additional Earnest Money.

Paragraph 2B(2) and 2C (Condominium Contract Only) is amended to clarify that the seller bears the expense to deliver the condominium documents and the resale certificate to buyer.

Paragraph 2F. Reservations (Farm and Ranch Contract Only) is amended to strike the parenthetical stating that reservations may be included in special provisions (suggesting that reservations are to be addressed only in a properly drafted addendum).

A new addendum is proposed to address who pays for and is responsible for damages from a hydrostatic test, if the parties agree to have one performed.

A new addendum is proposed to address the situation where the parties create a contingency to the contract based on the appraisal performed by the lender and termination rights or waiver associated with that contingency.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments and new rules.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the standard contract forms and greater consistency and consumer protection for the newly proposed addenda.

For each year of the first five years the proposed amendments and new rules are in effect, the amendments and new rules will not:

• create or eliminate a government program;

• require the creation of new employee positions or the elimination of existing employee positions;

• require an increase or decrease in future legislative appropriations to the agency;

• require an increase or decrease in fees paid to the agency;

• create a new regulation;

• expand, limit or repeal an existing regulation;

• increase or decrease the number of individuals subject to the rules' applicability;

• positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.coun-

sel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rules are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by these amendments and new rules are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments and new rules.

*§537.20. Standard Contract Form TREC No. 9-13 [~~9-12~~].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-13 [~~9-12~~] approved by the Commission in 2017 [~~2015~~] for use in the sale of unimproved property where intended use is for one to four family residences.

*§537.28. Standard Contract Form TREC No. 20-14 [~~20-13~~].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-14 [~~20-13~~] approved by the Commission in 2017 [~~2015~~] for use in the resale of residential real estate.

*§537.30. Standard Contract Form TREC No. 23-15 [~~23-14~~].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-15 [~~23-14~~] approved by the Commission in 2017 [~~2015~~] for use in the sale of a new home where construction is incomplete.

*§537.31. Standard Contract Form TREC No. 24-15 [~~24-14~~].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-15 [~~24-14~~] approved by the Commission in 2017 [~~2015~~] for use in the sale of a new home where construction is completed.

*§537.32. Standard Contract Form TREC No. 25-12 [~~25-11~~].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-12 [~~25-11~~] approved by the Commission in 2017 [~~2015~~] for use in the sale of a farm or ranch.

*§537.37. Standard Contract Form TREC No. 30-13 [~~30-12~~].*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-13 [~~30-12~~] approved by the Commission in 2017 [~~2015~~] for use in the resale of a residential condominium unit.

*§537.55. Standard Contract Form TREC No. 48-0.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 48-0 approved by the Commission in 2017 for use as an addendum to be added to promulgated forms if the parties agree to hydrostatic testing.

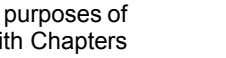
*§537.56. Standard Contract Form TREC No. 49-0.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 49-0 approved by the Commission in 2017 for use as an addendum to be added to promulgated forms concerning the right to terminate due to lender's appraisal.

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 November 16, 2017.

TRD-201704667
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 936-3092



# CHAPTER 541. RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

## 22 TAC §541.1

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §541.1, Criminal Offense Guidelines, in Chapter 541, Rules Relating to the Provisions of Texas Occupations Code, Chapter 53.

The proposed amendments to §541.1, are recommended by the Enforcement Committee of the Commission after review of the list of crimes that directly related to an applicant's fitness to practice as a real estate license holder, inspector or easement and right-of-way agent.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no significant anticipated impact on small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity of licensure requirements for applicants.

For each year of the first five years the proposed amendments are in effect the amendments will not:

• create or eliminate a government program;

• require the creation of new employee positions or the elimination of existing employee positions;

• require an increase or decrease in future legislative appropriations to the agency;

• require an increase or decrease in fees paid to the agency;

• create a new regulation;

• expand, limit or repeal an existing regulation;

• increase or decrease the number of individuals subject to the rule's applicability;

• positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to *general.counsel@trec.texas.gov.* The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

*§541.1. Criminal Offense Guidelines.*

(a) For the purposes of Texas Occupations Code, Chapter 53, §§1101.354, 1102.107, 1102.108, 1102.109, and §535.400(f) of this title, the Texas Real Estate Commission considers that a deferred adjudication deemed a conviction under §53.021 or a conviction of the following criminal offenses directly relate to the duties and responsibilities of a real estate broker, real estate salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector for the reason that the commission of the offenses tends to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness, and integrity:

(1) offenses involving fraud or misrepresentation;

(2) offenses involving forgery, falsification of records, or perjury;

(3) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(4) offenses against real or personal property belonging to another;

(5) offenses against the person;

(6) offenses against public administration;

(7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(8) offenses involving moral turpitude;

(9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);

(10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;

(11) felonies involving the manufacture, delivery, or intent to deliver controlled substances;

(12) offenses of attempting or conspiring to commit any of the foregoing offenses;

(13) offenses involving aiding and abetting the commission of an offense listed in this section;

(14) repeated violations of one criminal statute or multiple violations of different [~~any~~] criminal statutes [~~statute evidencing a disregard for or inability to comply with the law~~];

(15) felonies involving driving while intoxicated (DWI) or driving under the influence (DUI); and

[~~(16) any other offense that the Commission determines is directly related to an occupation regulated by the Commission using the factors described in subsection (b) of this section.~~]

(b) In determining whether a criminal offense not listed in subsection (a) of this section [~~or any other criminal offense~~] is directly related to an occupation regulated by the Commission, the Commission shall consider [~~and make appropriate findings of fact in a contested case upon the following factors~~]:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on November 16, 2017.

TRD-201704668
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 936-3092

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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

### CHAPTER 39. PUBLIC NOTICE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §39.411 and §39.603.

If adopted, the amendments to §39.411(e)(10) and (11)(A)(v) and (vi) and (F), (f) (introductory paragraph), and (f)(8) and §39.603 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Proposed Rules

Applications for New Source Review (NSR) case-by-case air quality permits are subject to the public participation requirements in 30 TAC Chapters 39 and 55. These rules implement House Bill (HB) 801 (76th Texas Legislature, 1999), which made changes to notice requirements for initial applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and amendments adopted in 2010, have been in effect, the commission has required applicants to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 30-day period; contested case hearing (CCH) and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, applicants are required to place a copy of the permit application in a public place in the county and to post signs at the proposed

facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, and after the TCEQ provides notice to state senators and representatives for the district in which the proposed facility will be located, applicants are required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments and public meeting requests for a 30-day period; hearing requests are also solicited but only if at least one such request was timely made in response to the NORI.

At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of the Chief Clerk, which, where applicable, will include information regarding changes to the draft permit based on the timely comments.

This rulemaking is proposed to implement Senate Bill (SB) 1045 (85th Texas Legislature, 2017). The proposed amendments would consolidate the NORI and NAPD requirements to allow for one 30-day notice period during which comments and requests for public meeting or CCH can be submitted. This consolidated notice would be required for air quality case-by-case permit applications that are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application.

No changes to other aspects of notice and public participation are included in this rulemaking. Permit applicants will continue to be required to post signs and, if applicable, publish notice and post signs in alternative language(s). The executive director will notify area legislators 30 days prior to issuance of a draft permit and will prepare a Response to Comments (RTC) if timely comments are received. If a request for CCH is received within the single 30-day comment period, the opportunity for additional CCH requests will extend to 30 days after the executive director files the RTC. Depending upon the date it is held, a public meeting may extend the deadline for submitting comments; however, the deadline for submitting a CCH request is not extended beyond the 30-day period after last publication of the consolidated notice unless a request for CCH is received within the 30-day period.

The consolidation of the timeframes for NORI and NAPD could apply to new permit or permit amendment applications which are solely for the addition or modification of facilities that are commonly authorized and for which the TCEQ's Air Permits Division (APD) staff has extensive experience in reviewing. However, this consolidation is available only when an application can be declared administratively and technically complete and a draft permit prepared within 15 days. Eligible applications would be those where, within the 15-day period following TCEQ's receipt of the application, the review would consist of checking emission calculations and control technology requirements, selecting draft permit conditions that are well established, and determining that the off-property impacts of the proposed emissions are not expected to adversely affect human health and the environment. The number of applications and the types of facilities that would be authorized by applications that would be eligible to publish consolidated notice is dependent upon the complexity of the project for which authorization is sought and the quality of the application, both of which affect APD's ability to prepare the draft permit within 15 days of receipt of the application.

For example, applications that may be processed within 15 days are those for a new permit where an applicant failed to timely renew their permit and no changes have been made to the facilities which were previously authorized. In addition, an application for a facility that was previously authorized but was not timely constructed for which the control technology and projected off-property impacts review have recently been conducted may be a candidate for the 15-day processing time. An application to add an additional similar facility at the same location for which the control technology and projected off-property impacts review has recently been conducted will not be a candidate for the 15-day processing time in cases where additional modeling is required.

This public notice alternative would allow for a more efficient air permit application process. APD may be able to streamline applications that meet specific criteria, thereby increasing the number of permit applications that could potentially utilize the consolidated notice. An example of recent APD permit streamlining efficiencies is the development of Readily Available Permits (RAP), which are NSR permits tailored to an individual facility type based on emissions calculations, equipment variables, and site-specific parameters. More information on RAPs is available here: https://www.tceq.texas.gov/permitting/air/guidance/newsourcereview/ra-permitting.html.

Concurrent with this proposal, and published in this issue of the *Texas Register,* the commission is proposing to amend 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §55.152, to provide for a 30-day notice period during which comments and requests for public meeting or CCH can be submitted in response to the consolidated NORI and NAPD. The 30-day period begins on the last date of newspaper publication, and the comment period is automatically extended to the close of any public meeting, as required by §55.152(b). Hearing requests must be submitted within the 30-day notice period; and, as provided for in 30 TAC §55.201, which implements SB 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

The public participation requirements for renewals of NSR case-by-case air quality permits are not affected by the proposed amendments in Chapters 39 and 55. Therefore, a consolidated notice is not available or required for NSR case-by-case air quality permit renewal applications.

Section by Section Discussion

In addition to the amendments discussed later, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

*§39.411, Text of Public Notice*

Clause (v) is proposed to be added to §39.411(e)(11)(A). This amendment would add requirements for a consolidated notice for air quality applications for a permit or a permit amendment application that the executive director has declared administratively and technically complete and has prepared a draft permit within 15 days of receipt of the application. This proposed amendment states that the text of the notice shall include the information in §39.411(e)(11)(A)(v)(I) - (IV), which consists of the following: the date the application was received and the date the draft permit was completed; statements that a request for a CCH must be received by the commission before the close of the 30-day

comment period following the last publication of the consolidated NORI and NAPD; if no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a CCH; and if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a CCH is extended to 30 days after the mailing of the executive director's RTC. Existing §39.411(e)(11)(A)(v) is proposed to be re-designated as clause (vi).

Section 39.411(f) is proposed to be amended to add a reference to proposed §39.603(d).

*§39.603, Newspaper Notice*

Proposed §39.603(d) would provide that owners and operators who submit applications declared by the executive director to be administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application are required to publish a consolidated NORI and NAPD. The consolidated NORI and NAPD must be published no later than 30 days after the executive director notifies the applicant of the declaration of administrative completeness and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the applicant. In addition, the new consolidated notice must contain the text as required by §39.411(e)(11).

Existing §39.603(d) - (f) is proposed to be re-lettered as subsections (e) - (g).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for TCEQ, and no fiscal implications are anticipated for other units of state or local government as a result of the implementation or administration of the proposed rules.

The proposed rules implement SB 1045 (85th Texas Legislature, 2017). The proposed amendments would consolidate the NORI and NAPD requirements to allow for one 30-day notice period during which comments and requests for public meetings or CCHs can be submitted. This consolidated notice would be required for air quality case-by-case permit applications which can be declared as administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application. The APD may be able to streamline applications that meet specific criteria, thereby increasing the number of permit applications which could potentially utilize the consolidated notice.

Under the proposed rules, instead of two separate notices (a NORI and a NAPD), the consolidated NORI and NAPD will be prepared and distributed to owners and operators who apply for permits to construct and operate facilities for which a draft permit can be prepared within 15 days of receipt of the application. Permit applicants make arrangements and pay for their own newspaper publication and then provide proof of publication to TCEQ. This is true for both English-language newspapers and, where applicable, for alternative language publications. The proposed consolidation is not anticipated to significantly reduce agency workload or costs for APD to issue the permits.

Other units of state or local government are rarely permit applicants, but if they are, the impact of this rulemaking is the same as for non-governmental applicants, which will incur a cost savings (as discussed in the Public Benefits and Costs section).

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be clarity in the type of notice that will be required for certain air quality permit applications. The public may benefit from the notice consolidation because the review of the application and draft permit will be available sooner than for applications that are subject to the requirement to publish two notices. This reduces the public's need for two reviews under the regular notice procedures (first notice for application only, second notice for application and draft permit). However, the time for public response (comments or hearing requests) is reduced from the time period allowed when publication of two notices is required.

No fiscal implications are anticipated for individuals as a result of the implementation or administration of the proposed rules. The proposed rules are expected to result in some cost savings and revenue losses for certain businesses. Owners or operators submitting applications for case-by-case permits may experience cost savings due to being required to secure only one newspaper publication notice, though in general these cost savings are not anticipated to be significant for some applicants. The newspaper publication notice costs will be reduced by approximately 50% for applications meeting the criteria to publish a consolidated notice, because only one round of publication will be required instead of the currently required two (for English language publication and also for any required alternative language publication). One round of publication costs may be between $674 and $9,759 depending on which newspaper (newspapers in larger cities have higher costs), the day of the week, and how many words are in the notice. One applicant would then be estimated to be able to save between $674 and $9,759 in publication costs, and newspapers around the state would lose a like amount in revenue for each instance of consolidated notice.

These costs are based on a survey of newspaper publication costs conducted in March 2016. No significant changes in charges by newspapers since that time are expected; and therefore, this data is reasonable for use in this fiscal note.

The opportunity to have a consolidated notice is only available for specific applications. The consolidated notice is required for specific applications for which the executive director can declare the application administratively and technically complete and prepare a draft permit within 15 days of receipt of the application. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number and type of facilities or businesses that will be affected cannot be estimated.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do 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 rules do not adversely affect a rural community in a material way for the first five years that the proposed rules are in effect. These state-wide rules will not affect rural communities in any way different from non-rural communi-

ties. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number and type of regulated entities in rural communities cannot be estimated.

Small and Micro-Business Impact 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. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number of small and micro-businesses that will be affected cannot be estimated.

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 small or micro-businesses for the first five-year period 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 rules do not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; or expand, limit, or repeal an existing regulation. The rules amend current newspaper publication requirements by reducing the number of publications if certain conditions, which are not mandatory for applicants or TCEQ, are met. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability. Finally, the rules do not positively or adversely affect the state's economy. This is because the number of notices and costs of notice are not anticipated to be significant, particularly when the rules have state-wide effect. Further, although publication of one notice is mandatory, it is required only when certain criteria, which are not mandatory for permit applicants or TCEQ, are met.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapters 39 and 55 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature.

Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments to Chapters 39 and 55 would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed to meet the requirements for public participation in the Texas Clean Air Act as identified in the Statutory Authority sections of this preamble.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapters 39 and 55 would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments 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.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rules will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 3, 2018, 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,

commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.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 2017-027-039-LS. The comment period closes on January 3, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at: *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Janis Hudson, Environmental Law Division, at (512) 239-0466.

## SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

### 30 TAC §39.411

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendment is also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and Senate Bill 1045.

*§39.411. Text of Public Notice.*

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

*(i)* all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after June 18, 2010;

*(ii)* all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after June 18, 2010; and

*(iii)* for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after June 18, 2010:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111 - 113 [~~111, 112, 113~~], 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

*(i)* for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

*(ii)* for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

*(iii)* for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

*(iv)* for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after January 1, 2017, the following statements:

*(I)* a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

*(II)* if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

*(III)* if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; [~~or~~]

*(v)* for new air quality permit applications and for permit amendment applications issued under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits), for which the executive director has declared the application administratively and technically complete and prepared a draft permit within 15 days of receipt of the application, the following information:

*(I)* the date the application was received and the date the draft permit was completed;

*(II)* a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(d) of this title;

*(III)* if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

*(IV)* if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

*(vi)* [~~(v)~~] for all air quality permit applications other than those in clauses (i) - (v) [~~(i(iv)~~] of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by

the end of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(vi) [~~(A)(v)~~] of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"

(15) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) or (d) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least 30 days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits [~~;~~] and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after June 18, 2010, the text of the notice must include the information in this subsection. Air quality permit applications filed before June 18, 2010, are governed by the rules in Subchapters H and K of this chapter as they existed immediately before June 18, 2010, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (16) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9), and (16) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

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 November 16, 2017.

TRD-201704643
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 239-6812

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## SUBCHAPTER K. PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

### 30 TAC §39.603

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, concerning Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the TCEQ. In addition, the amendment is also proposed under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and Senate Bill 1045.

*§39.603. Newspaper Notice.*

(a) Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the NAPD [~~Notice of Application and Preliminary Decision~~] to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated NORI [~~Notice of Receipt of Application and Intent to Ob-~~

~~tain Permit (NORI)~~] under §39.418 of this title and a NAPD [~~Notice of Application and Preliminary Decision (NAPD)~~] under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) Owners and operators who submit applications that are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application shall publish a consolidated NORI under §39.418 of this title and a NAPD under §39.419 of this title no later than 30 days after the executive director notifies the applicant of the declaration of administrative completeness and the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the applicant. This notice must contain the text as required by §39.411(e) of this title.

(e) [~~(d)~~] General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(f) [~~(e)~~] Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (d)(2) of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

*(i)* are not a major stationary source for federal air quality permitting;

*(ii)* do not emit 50 tons or more per year of any regulated air pollutant;

*(iii)* emit less than 75 tons per year of all regulated air pollutants combined; and

*(iv)* are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(g) [~~(f)~~] If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice once in a newspaper as described in subsection (d) of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 239-6812

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# CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

## SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

### 30 TAC §55.152

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes an amendment to §55.152.

If adopted, the amendment to §55.152(a)(3), (4), (7), and (8) will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking is proposed to implement Senate Bill (SB) 1045 (85th Texas Legislature, 2017). Proposed §55.152(a)(3) would provide for a 30-day notice period during which comments and requests for a public meeting or contested case hearing (CCH) can be submitted in response to the consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Receipt of Application and Preliminary Decision (NAPD). The 30-day period begins on the last date of newspaper publication, and the public comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201(c), which implements SB 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments. If a request for CCH is received within the single 30-day comment period, the opportu-

nity for additional CCH requests will extend to 30 days after the executive director files the Response to Comments (RTC). Depending upon the date it is held, a public meeting may extend the deadline for submitting comments; however, the deadline for submitting a CCH request is not extended beyond the 30-day period after last publication of the consolidated notice unless a request for CCH is received within the 30-day period.

Applications for New Source Review (NSR) case-by-case air quality permits are subject to the public participation requirements in 30 TAC Chapters 39 and 55. These rules implement House Bill (HB) 801 (76th Texas Legislature, 1999), which made changes to notice requirements for initial applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and amendments adopted in 2010 have been in effect, the commission has required applicants to publish a NORI which solicits comments for a 30-day period; CCH and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, applicants are required to place a copy of the permit application in a public place in the county and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, and after the TCEQ provides notice to state senators and representatives for the district in which the proposed facility will be located, applicants are required to publish NAPD, which solicits comments and public meeting requests for a 30-day period; hearing requests are also solicited but only if at least one such request was timely made in response to the NORI.

At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of the Chief Clerk, which, where applicable, will include information regarding changes to the draft permit based on the timely comments.

No changes to other aspects of notice and public participation are included in this rulemaking. Permit applicants will continue to be required to post signs and, if applicable, publish notice and post signs in alternative language(s). The executive director will notify area legislators 30 days prior to issuance of a draft permit and will prepare an RTC if timely comments are received. If a request for CCH is received within the single 30-day comment period, the opportunity for additional CCH requests will extend to 30 days after the executive director files the RTC. Depending upon the date it is held, a public meeting may extend the deadline for submitting comments; however, the deadline for submitting a CCH request is not extended beyond the 30-day period after last publication of the consolidated notice unless a request for CCH is received within the 30-day period.

The consolidation of the timeframes for NORI and NAPD could apply to new permit or permit amendment applications which are solely for the addition or modification of facilities that are commonly authorized and for which the TCEQ's Air Permits Division (APD) staff has extensive experience in reviewing. However, this consolidation is available only when an application can be declared administratively and technically complete and a draft permit prepared within 15 days. Eligible applications would be those where, within the 15-day period following TCEQ's receipt of the application, the review would consist of checking emission calculations and control technology requirements, selecting draft permit conditions that are well-established, and determining that the off-property impacts of the proposed emissions are not expected to adversely affect human health and the environment. The number of applications and the types of facilities that would be authorized by applications that would be eligible to publish consolidated notice is dependent upon the complexity of the project for which authorization is sought and the quality of the application, both of which affect APD's ability to prepare the draft permit within 15 days of receipt of the application.

For example, applications that may be processed within 15 days are those for a new permit where an applicant failed to timely renew their permit and no changes have been made to the facilities which were previously authorized. In addition, an application for a facility that was previously authorized but was not timely constructed for which the control technology and projected off-property impacts review have recently been conducted may be a candidate for the 15-day processing time. An application to add an additional similar facility at the same location for which the control technology and projected off-property impacts review has recently been conducted will not be a candidate for the 15-day processing time in cases where additional modeling is required.

This public notice alternative would allow for a more efficient air permit application process. APD may be able to streamline applications that meet specific criteria, thereby increasing the number of permit applications that could potentially utilize the consolidated notice. An example of recent APD permit streamlining efficiencies is the development of Readily Available Permits (RAP), which are NSR permits tailored to an individual facility type based on emissions calculations, equipment variables, and site-specific parameters. More information on RAPs is available here: https://www.tceq.texas.gov/permitting/air/guidance/newsourcereview/ra-permitting.html.

Concurrent with this proposal, and published in this issue of the Texas Register, the commission is proposing amendments to Chapter 39, Public Notice, to provide for a consolidated NORI and NAPD.

The public participation requirements for renewals of case-by-case permits are not affected by the proposed amendments in Chapters 39 and 55. Therefore, a consolidated notice is not available or required for NSR case-by-case air quality permit renewal applications.

Section Discussion

§55.152, Public Comment Period

Proposed §55.152(a)(3) would provide that the close of the public comment period is 30 days after the last publication of the consolidated notice concurrently proposed in §39.603(d) for new permit or permit amendment applications issued under Chapter 116, Subchapters B and G, which are declared administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application. Existing §55.152(a)(3) - (7) is proposed to be re-numbered as paragraphs (4) - (8).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for TCEQ, and no fiscal implications are anticipated for other units of state or local government as a result of the implementation or administration of the proposed rule.

The proposed rule implements SB 1045 (85th Texas Legislature, 2017). The proposed rule would consolidate the NORI and

NAPD requirements to allow for one 30-day notice period during which comments and requests for public meetings or CCHs can be submitted. This consolidated notice would be required for air quality case-by-case permit applications which can be declared as administratively and technically complete and for which a draft permit is prepared by the executive director within 15 days of receipt of the application. The APD may be able to streamline applications that meet specific criteria, thereby increasing the number of permit applications which could potentially utilize the consolidated notice.

Under the proposed rulemaking, instead of two separate notices (a NORI and a NAPD), the consolidated NORI and NAPD will be prepared and distributed to owners and operators who apply for permits to construct and operate facilities for which a draft permit can be prepared within 15 days of receipt of the application. Permit applicants make arrangements and pay for their own newspaper publication and then provide proof of publication to TCEQ. This is true for both English-language newspapers and, where applicable, for alternative language publications. The proposed consolidation is not anticipated to significantly reduce agency workload or costs for APD to issue the permits.

Other units of state or local government are rarely permit applicants, but if they are, the impact of this rulemaking is the same as for non-governmental applicants, which will incur a cost savings (as discussed in the Public Benefits and Costs section).

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules is in effect, the public benefit anticipated from the changes seen in the proposed rules will be clarity in the type of notice that will be required for certain air quality permit applications. The public may benefit from the notice consolidation because the review of the application and draft permit will be available sooner than for applications that are subject to the requirement to publish two notices. This reduces the public's need for two reviews under the regular notice procedures (first notice for application only, second notice for application and draft permit). However, the time for public response (comments or hearing requests) is reduced from the time period allowed when publication of two notices is required.

No fiscal implications are anticipated for individuals as a result of the implementation or administration of the proposed rule. The proposed rule is expected to result in some cost savings and revenue losses for certain businesses. Owners or operators submitting applications for case-by-case permits may experience cost savings due to being required to secure only one newspaper publication notice, though in general these cost savings are not anticipated to be significant for some applicants. The newspaper publication notice costs will be reduced by approximately 50% for applications meeting the criteria to publish a consolidated notice, because only one round of publication will be required instead of the currently required two (for English language publication and also for any required alternative language publication). One round of publication costs may be between $674 and $9,759 depending on which newspaper (newspapers in larger cities have higher costs), the day of the week, and how many words are in the notice. One applicant would then be estimated to be able to save between $674 and $9,759 in publication costs, and newspapers around the state would lose a like amount in revenue for each instance of consolidated notice.

These costs are based on a survey of newspaper publication costs conducted in March 2016. No significant changes in charges by newspapers since that time are expected; and therefore, this data is reasonable for use in this fiscal note.

The opportunity to have a consolidated notice is only available for specific applications. The consolidated notice is required for specific applications for which the executive director can declare the application administratively and technically complete and prepare a draft permit within 15 days of receipt of the application. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number and type of facilities or businesses that will be affected cannot be estimated.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rule does not adversely affect a rural community in a material way for the first five years that the proposed rule is in effect. The state-wide rule will not affect rural communities in any way different from non-rural communities. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number and type of regulated entities in rural communities cannot be estimated.

Small and Micro-Business Impact Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. Because the ability for the TCEQ to prepare the draft permit is dependent upon the complexity of the project for which authorization is sought and the quality of the application, the number of small and micro-businesses that will be affected cannot be estimated.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rule does not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; or expand, limit, or repeal an existing regulation. The rule amends current newspaper publication requirements by reducing the number of publications if certain conditions, which are not mandatory for applicants or TCEQ, are met. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability. Finally, the rule does not positively or adversely affect the state's economy. This is because

the number of notices and costs of notice are not anticipated to be significant, particularly when the rule has state-wide effect. Further, although publication of one notice is mandatory, it is required only when certain criteria, which are not mandatory for permit applicants or TCEQ, are met.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapters 39 and 55 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature.

Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the proposed amendments to Chapters 39 and 55 would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. This proposed rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed to meet the requirements for public participation in the Texas Clean Air Act as identified in the Statutory Authority sections of this preamble.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapters 39 and 55 would amend the notice requirements for certain case-by-case air quality permit applications, which are procedural in nature. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendment affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendment is not subject to the Texas Coastal Management Program.

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

Effect on Sites Subject to the Federal Operating Permits Program

The proposed rule will not require any changes to outstanding federal operating permits.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 3, 2018, 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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www1.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 2017-027-039-LS. The comment period closes on January 3, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at: http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Janis Hudson, Environmental Law Division, at (512) 239-0466.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC or other laws; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC or other laws; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, concerning Persons Affected in Commission Hearings; Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also proposed under Texas Health and Safety Code (THSC), §382.002, concerning

Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission. In addition, the amendment is also proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, et seq., which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standards will be achieved and maintained within each air quality control region of the state.

The proposed amendment implements THSC, §382.056 and Senate Bill 1045.

*§55.152. Public Comment Period.*

(a) Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title (relating to Notice of Application and Preliminary Decision), for an air quality permit application not otherwise specified in this section;

(2) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title (relating to Newspaper Notice) for a registration for a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits), unless the plant is to be temporarily located in or contiguous to the right-of-way of a public works project;

(3) 30 days after the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision under §39.603 of this title for an application for a new permit or permit amendment under Chapter 116, Subchapters B and G of this title (relating to New Source Review Permits and Flexible Permits);

(4) [~~(3)~~] 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title, or 30 days after Notice of Application and Preliminary Decision if a second notice is required under §39.419 of this title, for a permit renewal under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(5) [~~(4)~~] 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit, or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit, or 30 days after the publication of Notice of Application and Preliminary Decision for Class 3 modifications of non-hazardous industrial solid waste permits;

(6) [~~(5)~~] 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control);

(7) [~~(6)~~] the time specified in commission rules for other specific types of applications; or

(8) [~~(7)~~] as extended by the executive director for good cause.

(b) The public comment period shall automatically be extended to the close of any public meeting.

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 November 16, 2017.

TRD-201704646
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 239-6812

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## CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
## SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS
## DIVISION 2. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§114.610 - 114.612 and §114.616; and new §§114.610 - 114.613.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement requirements of Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, as established under Senate Bill 1731 (SB 1731 or bill), 85th Texas Legislature, 2017.

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP or program) was originally created by SB 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the commission was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002 - 2003 fiscal biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility

for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014 - 2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

SB 1731 re-established the LDPLIP under THSC, Chapter 386, Subchapter D, and included changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from $2,500 to $5,000, while the maximum incentive for a vehicle powered by an electric drive remained at $2,500. The bill also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to the first sale or within 500 miles of operation of the vehicle following the first sale.

Section by Section Discussion

*Subchapter K: Mobile Source Incentive Programs*

*Division 2: Light-Duty Motor Vehicle Purchase or Lease Incentive Program*

The proposed rulemaking would repeal §§114.610 - 114.612 and §114.616 and replace the rule language to incorporate the new program criteria established by SB 1731 under THSC, Chapter 386, Subchapter D.

*§114.610, Definitions*

The commission proposes new §114.610 to establish definitions for terms used in this division.

In proposed §114.610(1), a "Lease" would be defined as the use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more. In proposed §114.610(2), a "Lessee" would be defined as a person who enters into a lease for a new light-duty motor vehicle.

In proposed §114.610(3), a "Light-duty motor vehicle" would be defined as a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less. In proposed §114.610(4), a "Motor vehicle" would be defined as a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

In proposed §114.610(5), a "New light-duty motor vehicle" would be defined as a light-duty motor vehicle that has never been the subject of a first retail sale. In proposed §114.610(6) "Retail sale" would have the meaning defined under Texas Occupations Code, §2301.002. The definition of "retail sale" in the Texas Occupations Code means any sale of a motor vehicle other than: a) a sale in which the purchaser acquires a vehicle for resale; or b) a sale of a vehicle that is operated in accordance with Texas Transportation Code, §503.061. This section of the Transportation Code pertains to vehicles operated by a dealer with a dealer's license plate.

*§114.611, Applicability*

The commission proposes new §114.611(a) to establish that the provisions of this division would apply statewide, subject to the availability of funding.

Criteria is proposed in §114.611(b) that a purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. Under the proposed criteria, these limitations would not apply if, on the date the incentive is awarded, the vehicle change is not required under the listed requirements. Also, the restrictions would not apply if the purchase or lease is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

*§114.612, Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements*

The commission proposes new §114.612 to establish eligibility requirements and other requirements for applying for and receiving an incentive under this division. Under the proposed criteria in §114.612(a), a purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for an incentive if the vehicle meets the requirements outlined in this subsection and is included on the list of eligible vehicles as compiled by the commission under the proposed provisions of §114.613. Also under the proposed subsection (a), by August 1 of each year §114.612 is in effect and appropriations are available to fund this program, the commission would publish a list of eligible vehicles on its website.

Section 114.612(a) also includes proposed eligibility criteria for vehicles to receive an incentive. Under proposed §114.612(a)(1), a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas would need to have four wheels, and be originally manufactured to comply with and have been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or have been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas. The vehicle would need to have been manufactured for use primarily on public streets, roads, and highways, and would need to have a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first retail sale or installed in Texas within 500 miles of operation of the vehicle following first retail sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency.

Under the proposed criteria in §114.612(a)(1), a compressed natural gas fuel system would need to comply with the 2013 (or newer) National Fire Protection (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers. A liquefied petroleum gas system would need to comply with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers Boiler and Pressure Vessel Code.

Section 114.612(a)(2) includes proposed eligibility criteria for a light-duty motor vehicle powered by an electric drive. Under the proposed criteria, a new light-duty motor vehicle powered by an electric drive would need to have four wheels and have been manufactured for use primarily on public streets, roads, and highways. The vehicle's powertrain could not have been modified from the original manufacturer's specifications. The vehicle would need to have a maximum speed capability of at least 55 miles per hour and be propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or

from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

Section 114.612(b) and (c) include proposed incentive amounts. Under the proposed criteria, a person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a $5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a $2,500 incentive.

Under the proposed criteria in §114.612(d), an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. The purchaser or lessee must complete the application for the incentive, providing all required information, and sign a certification that the purchaser or lessee will register and operate the light-duty motor vehicle in this state for not less than one year. Proposed §114.612(e) would require that incentives be applied for using forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

Proposed §114.612(f) would require that only one incentive would be provided for each eligible new light-duty motor vehicle purchased or leased in this state. Under proposed §114.612(g), the incentive would be provided to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

Proposed §114.612(h) would require that a lease of an eligible new light-duty motor vehicle be prorated based on a three-year term. A one-year lease may qualify for 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount. Under the proposed criteria, an incentive would only be prorated based on a full-year lease.

*§114.613, Manufacturer's Report*

The commission proposes new §114.613 to establish requirements and procedures for manufacturers to submit a report on eligible vehicles and compressed natural gas and liquefied petroleum gas systems that the manufacturer intends to sell in this state. Under proposed §114.613(a), a manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems would be required to provide to the executive director a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during the model year and that are certified to meet the eligibility standards under §114.612(a).

Proposed §114.613(a) would outline the required contents of the lists to be provided to the executive director by manufacturers. Under the proposed subsection, the list would need to contain the vehicle manufacturer name, vehicle model, and vehicle model year; the intermediate or final state vehicle manufacturer name, if applicable; and the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable. Information about the vehicle would also need to be provided, including the engine displacement, qualifying fuel type, gross vehicle weight rating, and the engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency. If applicable, the compressed natural gas or liquefied petroleum gas system engine or vehicle family name would also need to be provided. The manufacturer would need to certify that the vehicle and compressed natural gas or liquefied petroleum gas system complies with the standards of this division. The commission may also request other information to be provided by the manufacturer.

Under §114.613(b), the list to be submitted by manufacturers must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

Proposed §114.613(c) would allow a manufacturer to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

Fiscal Note: Costs to State and Local Government1

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government.

In 2017, the 85th Texas Legislature enacted SB 1731 that re-established the LDPLIP under THSC, Chapter 386, Subchapter D. A previous program had expired August 31, 2015. SB 1731 re-established the LDPLIP with additional changes from the previous program.

The proposed rulemaking would repeal rules for the previously authorized program and establish rules for the new program. Under the proposed rulemaking, a person who purchases or leases a new light-duty motor vehicle in Texas would be eligible for an incentive if the vehicle meets the eligibility requirements and is included on a list of eligible vehicles to be published on the agency's website. A "Light-duty motor vehicle" would be defined as a motor vehicle with a gross vehicle weight rating of 10,000 pounds or less.

The proposed rulemaking would include criteria for vehicles to receive an incentive, including criteria for vehicles powered by compressed natural gas or liquefied petroleum gas and electric vehicles powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatts and is capable of being recharged from an external source of electricity.

Under the proposed criteria, a person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a $5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a $2,500 incentive. The incentive for the lease of an eligible new light-duty motor vehicle would be prorated on a three-year term. The incentive for a one-year lease would be 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount.

The rulemaking would establish requirements and procedures for a manufacturer of eligible light-duty motor vehicles, an intermediate or final state manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems to submit a report to the executive director in order for the executive director to compile a list of eligible vehicles and systems. The report

would need to include required information on the new light-duty motor vehicle models or natural gas or liquefied petroleum gas systems, that the manufacturer intends to sell in Texas during the model year. The manufacturer would also be required to certify that the vehicle models or systems meet the eligibility standards.

The manufacturer reports would need to be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year. A manufacturer would also be authorized to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

The TCEQ would be required to administer the new program, including processing and approving applications, executing the incentive contracts, and processing payment of the incentives.

The agency proposes to hire two temporary employees for six months each fiscal biennium at a cost of $60,000 to assist in implementing and administering the new LDPLIP. The temporary employees would be hired the first fiscal year (FY) of the biennium, but in some cases, the six-month employment term could extend into the second FY. In those cases, a portion of the $60,000 cost for the two temporary staff could be incurred in the second FY.

The legislature did not authorize new full-time employees for implementing the new LDPLIP. However, the overall allocation for administrative costs to administer the Texas Emissions Reduction Plan (TERP) programs was increased to up to $8 million per FY in FY 2018 and FY 2019. The costs for the temporary employees will be covered by the additional administrative funding.

All types of governmental entities that purchase or lease an eligible light-duty motor vehicle in Texas would be eligible to apply for this voluntary incentive program. Because applying for an incentive would be voluntary, it is not known how many governmental entities would apply in the future.

Public Benefits and Costs to Businesses and Individuals

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a potential increase in the use of alternative fuels and electricity with a beneficial impact on the state's air quality for types of pollutants where the use of alternative fuels or electricity would result in fewer emissions.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules. The proposed rules relate to voluntary incentive programs. Only those entities that apply for and receive an incentive would be required to register the light-duty motor vehicle in Texas for at least one year. Because participation in the program would be voluntary, it is not known how many entities would apply.

Individuals that apply for and receive a grant will have a cost savings of up to $2,500 for the purchase or lease of an eligible electric-drive vehicle and up to $5,000 for the purchase or lease of an eligible vehicle powered by compressed natural gas or liquefied petroleum gas.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect a rural community in a material way for the first five years that the proposed rules are in effect. These statewide rules will not affect rural communities in any way different from non-rural communities. These rules involve voluntary incentives for persons or entities that purchase or lease an eligible new light-duty motor vehicle. The proposed rulemaking would not affect rural communities.

Small and Micro-Business Impact Statement

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. The proposed rules involve voluntary incentive programs. No direct impact on small or micro-businesses will occur as a result of the proposed rulemaking, except to the extent a small or micro-business purchases or leases an eligible light-duty motor vehicle.

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 small or micro-businesses for the first five-year period the proposed rules are in effect.

Government Growth Impact Statement Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The rulemaking will create a new incentive program. No employee positions are created or eliminated as a direct result of this rulemaking. The agency proposes to hire two temporary employees on a six-month basis each fiscal biennium to assist with implementing and administering the program. The proposed rulemaking would not directly require an increase or decrease in future legislative appropriations of the agency. Continued funding for the LDPLIP will be a legislative decision. The decision of the legislature to continue the funding would not be impacted by this rulemaking. The proposed rulemaking would not impact fees paid to the agency. The proposed rulemaking would create a new regulation to establish the criteria and procedures for the new incentive program. The proposed rulemaking repeals existing regulation for the previous incentive program that expired August 31, 2015, and replaces those rules with rules to implement the new program. Because the proposed rulemaking would implement a new incentive program, the proposed rulemaking would increase the number of individuals subject to the rule's applicability.

The rulemaking involves voluntary incentive programs for the purchase or lease of light-duty motor vehicles in Texas if the vehicle meets the eligibility requirements and is included on a list of eligible vehicles to be published on the agency's website. Any impact to the growth of government is a result of the passage of SB 1731 and not of this rulemaking. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

During the first five years that the rules would be in effect, it is anticipated that this rulemaking will not positively or adversely

impact the state's economy. The proposed rules involve voluntary incentive programs. The proposed rules could result in cost savings of up to $2,500 for the purchase or lease of an eligible electric-drive vehicle and up to $5,000 for the purchase or lease of an eligible vehicle powered by compressed natural gas or liquefied petroleum gas.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rules are proposed in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386 to add a new Subchapter D. The proposed rules add or revise guidelines for a voluntary grant. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these rules place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §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.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to repeal and replace rule language in Chapter 114, Subchapter K, Division 2, in accordance with new THSC, Chapter 386, Subchapter D, as a result of SB 1731, 85th Texas Legislature, 2017. The rules establish a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because 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 proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking does not impact any CMP goals or policies because it revises a voluntary incentive grant program and does not govern air pollution emissions.

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 public hearing on this proposal in Austin on December 11, 2017, at 2:00 p.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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should con-

tact 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.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.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 2017-030-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

**30 TAC §§114.610 - 114.612, 114.616**

Statutory Authority

The repeal of the sections is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal of the sections is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The repeal of the sections is proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

*§114.610. Definitions.*

*§114.611. Applicability.*

*§114.612. Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements.*

*§114.616. Manufacturer's Report.*

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 November 16, 2017.

TRD-201704650
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 239-6812

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**30 TAC §§114.610 - 114.613**

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new sections are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The new sections are proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by SB 1731, 85th Texas Legislature, 2017.

*§114.610. Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Lease--The use and control of a new light-duty motor vehicle in accordance with a rental contract for a term of 12 consecutive months or more.

(2) Lessee--A person who enters into a lease for a new light-duty motor vehicle.

(3) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of 10,000 pounds or less.

(4) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) New light-duty motor vehicle--A light-duty motor vehicle that has never been the subject of a first retail sale.

(6) Retail Sale--Has the meaning as defined under Texas Occupations Code, §2301.002,

*§114.611. Applicability.*

(a) The provisions of this division apply statewide subject to the availability of funding.

(b) A purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified purchase or lease, regardless of the fact that the state implementation plan assumes that the change in vehicles will occur, if on the date the incentive is awarded the change

is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase or lease of a new light-duty motor vehicle required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

*§114.612. Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements.*

(a) The purchaser or lessee of a new light-duty motor vehicle powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drive may be eligible for the incentive specified in subsection (b) or (c) of this section if the vehicle meets the requirements specified in paragraph (1) or (2) of this subsection and is listed on the list of eligible vehicles provided to the commission as specified under §114.613 of this title (relating to Manufacturer's Report). By August 1 of each year this division is in effect and appropriations are available to fund this program the commission will publish on its website a list of the eligible vehicles provided to the commission as specified under §114.613 of this title. Eligible vehicles include:

(1) a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas that:

(A) has four wheels;

(B) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;

(C) was manufactured for use primarily on public streets, roads, and highways;

(D) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first retail sale or installed in Texas within 500 miles of operation of the vehicle following first retail sale, and with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency; and

(E) has, as applicable, a:

*(i)* compressed natural gas fuel system that complies with the 2013 (or newer) National Fire Protection Association (NFPA) 52 Vehicular Gaseous Fuel Systems Code and American National Standard for Basic Requirements for Compressed Natural Gas Vehicle Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

*(ii)* liquefied petroleum gas fuel system that complies with the 2011 (or newer) NFPA 58 Liquefied Petroleum Gas Code and Section VII of the 2013 (or newer) American Society of Mechanical Engineers Boiler and Pressure Vessel Code; or

(2) a new light-duty motor vehicle powered by electric drive that:

(A) has four wheels;

(B) was manufactured for use primarily on public streets, roads, and highways;

(C) the powertrain has not been modified from the original manufacturer's specifications;

(D) has a maximum speed capability of at least 55 miles per hour; and

(E) is propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that:

*(i)* has a capacity of not less than four kilowatt hours; and

*(ii)* is capable of being recharged from an external source of electricity.

(b) A person who purchases or leases a new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas eligible for an incentive under subsection (a) of this section may be eligible to receive a $5,000 incentive.

(c) A person who purchases or leases a new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive eligible for an incentive under subsection (a) of this section may be eligible to receive a $2,500 incentive.

(d) To be eligible for the incentives under subsection (b) or (c) of this section, the purchaser or lessee must meet the following criteria:

(1) acquired the eligible vehicle after the date established by the commission in the application solicitation;

(2) completes the application for the Light-Duty Vehicle Purchase or Lease Incentive, providing all required information; and

(3) signs a certification that the purchaser or lessee will register and operate the light-duty motor vehicle in this state for not less than one year.

(e) Incentives must be applied for using the forms developed and provided by the commission and must include the verification of purchase or lease as may be required by the commission.

(f) Only one incentive will be provided for each eligible new light-duty motor vehicle purchased or leased in the state.

(g) The incentive shall be provided to the lessee and not to the purchaser if the eligible new light-duty motor vehicle is purchased for the purpose of leasing the light-duty motor vehicle to another person.

(h) An incentive for the lease of an eligible new light-duty motor vehicle shall be prorated based on a three-year lease term. A person who leases an eligible new light-duty motor vehicle may qualify for 33.3% of the full incentive with a one-year lease, 66.6% of the full incentive with a two-year lease, and 100% of the full incentive with a three-year lease. The incentive will only be prorated based on a full-year lease.

*§114.613. Manufacturer's Report.*

(a) In order for a manufacturer to ensure that its vehicles are included in the list of eligible vehicles to be published by the commission on its website, a manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems shall provide to the executive director, or the executive director's designee, a list of the new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during that model year that are certified to meet the standards listed under §114.612(a) of this title (relating to Light-Duty Motor Vehicle Purchase or Lease Incentive Requirements). The list must contain for each light-duty motor vehicle or natural gas or liquefied petroleum gas system listed:

(1) the vehicle manufacturer name, vehicle model, and vehicle model year;

(2) the intermediate or final state vehicle manufacturer name, if applicable;

(3) the compressed natural gas or liquefied petroleum gas system manufacturer name, system model, and system model year, if applicable;

(4) the engine displacement, qualifying fuel type, gross vehicle weight rating, and engine or vehicle family name as listed on the Certificate of Conformity issued by the United States Environmental Protection Agency;

(5) the compressed natural gas or liquefied petroleum gas conversion system engine or vehicle family name, if applicable;

(6) certification by the manufacturer that the vehicle and, if applicable, the compressed natural gas or liquefied petroleum gas system comply with the standards of this division; and

(7) other information as may be requested by the commission.

(b) The list required by subsection (a) of this section must be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year.

(c) A manufacturer of new light-duty motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems may supplement the list required by subsection (a) of this section to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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## SUBCHAPTER K. MOBILE SOURCE INCENTIVE PROGRAMS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.620, 114.622, 114.623, 114.644, 114.650 - 114.653, and 114.680 - 114.682; and the repeal of §§114.648, 114.658, 114.660 - 114.662, and 114.670 - 114.672.

If adopted, the amendments to §§114.620, 114.622, 114.623, 114.650 - 114.653, and 114.680 - 114.682 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules implementing the Diesel Emissions Reduction Incentive Program (DERIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C; the Texas Clean School Bus Program (TCSBP) established under THSC, Chapter 390; the Texas Clean Fleet Program (TCFP) established under THSC, Chapter 392; and the Seaport and Rail Yard Emissions Reduction Program, established under THSC, Chapter 386, Subchapter D-1. The purpose of this rulemaking is also to repeal existing rules that established prioritization criteria for the Alternative Fueling Facilities Program (AFFP) established under THSC, Chapter 393; and the Texas Natural Gas Vehicle Grant Program (TNGVGP) established under THSC, Chapter 394.

The incentive programs implemented by these rules are part of the Texas Emissions Reduction Plan (TERP) established under THSC, Chapter 386, and administered by the commission. The enabling legislation creating the TERP was enacted under Senate Bill (SB) 5, 77th Texas Legislature, 2001. The TERP was created to provide financial incentives for reducing emissions of on-road heavy-duty motor vehicles and non-road equipment, with the DERIP as the primary incentive program. In subsequent years, additional programs were added to the TERP to provide incentives to install retrofit devices on school buses to reduce exposure of school children to diesel exhaust, programs to provide incentives to replace diesel vehicles with alternative fuel vehicles, programs to provide incentives for the construction of fueling facilities to provide alternative fuel, and a program to replace drayage trucks at seaports and rail yards with newer, cleaner models. The chapters in the THSC authorizing these programs and the TERP in general were scheduled to expire August 31, 2019.

SB 1731, 85th Texas Legislature, 2017, extended the expiration dates of these programs and revised some of the program criteria and processes. Instead of establishing a specific new expiration date, SB 1731 extended the programs until the last day of the state fiscal biennium during which the commission publishes in the *Texas Register* notification that the EPA has published in the *Federal Register* that areas in the state are designated attainment or unclassifiable/attainment for National Ambient Air Quality Standards (NAAQS) for ozone, or the EPA has approved a redesignation substitute making a finding of attainment for the area, and judicial reviews of the EPA actions and rules have been completed and upheld the findings or the limitations period to seek judicial review has expired. The proposed rulemaking would amend the TCSBP and TCFP rules to remove the rule expiration dates.

SB 1731 amended the DERIP criteria under THSC, Chapter 386, Subchapter C, to revise the definition of a small business to include a small business that owns and operates not more than five vehicles and to remove model-year restrictions on vehicles and equipment that may be owned by the small business. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements. Also, SB 1731 added clarifying language to the small business incentive requirements to specify that the commission may implement the small business incentives either through a separate small business grant program or through special consideration to small businesses when implementing another program under THSC, Chapter 386, Subchapter C. The proposed rulemaking would make corresponding changes to the DERIP rules.

SB 1731 amended the criteria for the TCSBP under THSC, Chapter 390, to add replacement of an existing school bus with a new school bus as an eligible project category. The

changes included model-year requirements for the school bus being replaced and the school bus being purchased, as well as ownership and operational requirements. The school bus being purchased must be operated on a regular daily route to and from a school during the school year for at least five years after a start date established by the commission. SB 1731 also established a requirement that the school bus being replaced must be rendered permanently inoperable or be permanently removed from the state to a destination outside of the United States, Canada, or the United Mexican States. The proposed rulemaking would incorporate into rule provisions the changes made by SB 1731.

SB 1731 removed the definition of the "clean transportation triangle" in THSC, §394.010, and added the definition of the "clean transportation zone" in THSC, §393.001. The new clean transportation zone includes additional counties that were not part of the previous clean transportation triangle. The references to the clean transportation triangle in the special provisions under the TCFP requirements in THSC, Chapter 392, pertaining to vehicles used for agricultural product transportation were also amended to refer to the clean transportation zone. SB 1731 also amended the criteria for the TCFP to change the requirement that a grant application include the replacement of at least 20 vehicles to require that at least 10 vehicles be included in the application. In addition, the provisions requiring that a vehicle qualifying for an incentive be certified to current federal emission standards was changed to require that the vehicle be certified to the appropriate current federal emissions standards as determined by the commission. The requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements. The proposed rulemaking would make corresponding changes to the TCFP rules.

SB 1731 also removed the rulemaking requirements for the AFFP under THSC, Chapter 393, and the TNGVGP under THSC, Chapter 394. The rules for these programs only outline some, and not all, possible prioritization criteria for selecting projects under those programs and do not include the more detailed program implementation processes and criteria. Because the rules are no longer required and because the prioritization criteria in the rules provide only general information and not specific direction on implementation of these programs, the commission has determined that the rules are not needed in order to effectively implement the programs. The program requirements will be implemented through the grant solicitation and contracting documents. Therefore, the commission proposes to repeal the AFFP program rules under §§114.660 - 114.662 and the TNGVGP rules under §§114.670 - 114.672.

Section by Section Discussion

*Subchapter K, Division 3: Diesel Emissions Reduction Incentive Program for On-Road and Non-Road Vehicles*

*§114.620, Definitions*

The commission proposes to amend the definition of a "Small business" under §114.620(11). The proposed amendment would change the requirement that in order to qualify as a small business a person may own no more than two vehicles, to instead require that a person may own no more than five vehicles. The engine model-year requirements for at least one of the on-road or non-road diesels owned and operated by the small business would be removed. In addition, the requirement that a person must have owned the on-road or non-road diesel for more than one year would be changed to require that a person must have owned the on-road or non-road diesel for more than two years.

*§114.622, Incentive Program Requirements*

The commission proposes to amend the requirement under §114.622(h) that the executive director shall waive certain eligibility requirements established under subsections (b) - (f) on a finding of good cause, to state the executive director may waive certain eligibility requirements.

*§114.623, Small Business Incentives*

The commission proposes to amend §114.623(a) to add clarifying language specifying that the small business incentives provided for under the rules may be implemented either through a separate small business grant program or through special consideration to small businesses when implementing another program established under Division 3.

*Subchapter K, Division 4: Texas Clean School Bus Program*

*§114.644, Clean School Bus Program Requirements*

The commission proposes §114.644(a)(6) to include the replacement of a pre-2007 model year school bus to the list of eligible projects under the program.

The commission proposes to amend §114.644(d) to add the phrase "during the school year" to the requirement that a school bus proposed for retrofit must be used on a regular, daily route to and from a school, to clarify that the requirement only applies during the school year.

The commission proposes to amend §114.644(e) to remove the existing provisions for a proposed project that included a replacement of equipment or a repower under this subsection. These provisions required the old equipment or engine be recycled, scrapped, or otherwise permanently removed from the state. The proposed amendment would add requirements for a school bus proposed for replacement. Under the proposed requirements, a school bus proposed for replacement must: be a model year 2006 or earlier; have been owned or operated by the applicant for at least two years before submission of the grant application; be in good operational condition; and be currently used on a regular daily route to and from a school during the school year.

The commission proposes §114.644(f) to require that a school bus proposed for purchase to replace a pre-2007 model year school bus be of the current model year or the year before the current model year. Current subsection (f) is re-lettered as proposed subsection (i).

The commission proposes §114.644(g) to require that the replacement school bus must be purchased and the grant recipient must agree to own and operate the school bus on a regular, daily route to and from a school during the school year for at least five years after a start date established by the commission, which is to be based on the date the commission accepts documentation of disposition of the school bus being replaced. Current subsection (g) is re-lettered as proposed subsection (j).

The commission proposes §114.644(h) to require that a school bus replaced under the program be rendered permanently inoperable or be permanently removed from the state to a destination outside of the United States, Canada, or the United Mexican States. Current subsection (h) is re-lettered as proposed subsection (k).

Existing §114.644(i) and (j) would also be re-lettered as proposed subsections (l) and (m) to account for the added subsections.

*Subchapter K, Division 4: Texas Clean School Bus Program*

*§114.648, Expiration*

The commission proposes to repeal §114.648, which established an expiration date for Division 4 of August 31, 2019, unless the program were extended or reauthorized by the Texas Legislature.

*Subchapter K, Division 5: Texas Clean Fleet Program*

*§114.650, Definitions*

The commission proposes to amend §114.650(1)(C) to change the reference from "clean transportation triangle" to "clean transportation zone" and to change the reference to the statutory definition from THSC, §394.010, to refer to THSC, §393.001.

*§114.651, Applicability*

The commission proposes to amend §114.651(a) to change the requirement that an eligible entity that will replace 20 or more diesel vehicles within a 12-month period with qualifying vehicles may apply for a grant to refer to replacement of 10 or more vehicles. Also, the reference to a "twelve-month" period is changed to refer to a "12-month" period.

The commission proposes to amend §114.651(b) to change the requirement that an application for a grant under the Texas Clean Fleet Program include 20 or more vehicles for replacement to require that the application include 10 or more vehicles for replacement.

*§114.652, Qualifying Vehicles*

The commission proposes to amend §114.652(a)(1) to add clarifying language to the provision that a qualifying purchase must be certified to current federal emissions standards. Under the proposed revision, a qualifying vehicle must be certified to "the appropriate" current federal emissions standards "as determined by the commission."

*§114.653, Grant Eligibility*

The commission proposes to amend §114.653(e) to change the provision that the executive director shall waive the requirements of §114.653(b)(1) on a finding of good cause, to state that the executive director may waive the requirements.

*Subchapter K, Division 5: Texas Clean Fleet Program*

*§114.658, Implementation Schedule*

The commission proposes to repeal §114.658 to remove the expiration date for this division.

*Subchapter K, Division 6: Alternative Fueling Facilities Program*

The commission proposes to repeal this division, §§114.660 - 114.662, as it is obsolete.

*Subchapter K, Division 7: Texas Natural Gas Vehicle Grant Program*

The commission proposes to repeal this division, §§114.670 - 114.672, as it is obsolete.

*Subchapter K, Division 8: Drayage Truck Incentive Program*

The commission proposes to amend the title of this division to "Seaport and Rail Yard Areas Emissions Reduction Program."

*§114.680, Definitions*

The commission proposes to amend the definition of "Cargo handling equipment" under §114.680(1) to insert the term "land-based" before the phrase "….equipment used at a seaport or rail yard…." The commission also proposes to add paragraph (6) to include a definition of "Repower" and to renumber the definition of "Seaport" from paragraph (6) to paragraph (7).

*§114.681, Applicability*

The commission proposes to amend §114.681 to change the reference from "Drayage Truck Incentive Program" to "Seaport or Rail Yard Areas Emissions Reduction Program."

*§114.682, Eligible Vehicle Models*

The commission proposes to amend §114.682(c) to remove the existing requirement that to be eligible for purchase a drayage truck must have an engine of model year 2010 or later and the drayage truck being replaced must have an engine of model year 2006 or earlier. In place of the existing language in subsection (c), the proposed amendment would add requirements that to be eligible for purchase under this program a drayage truck or cargo handling equipment must: be powered by an electric motor or contain an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine on the truck or equipment being replaced.

The commission also proposes §114.682(d) to add requirements for engines or motors eligible for the repowering of a drayage truck or cargo handling equipment. The language would require that an engine or motor be powered by electricity or be an engine certified to the current federal emissions standards applicable to that type of engine and that the engine or motor emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine being replaced.

The commission proposes §114.682(e) to specify that, unless otherwise determined by the commission, the nitrogen oxides emissions rate of the engines replaced or purchased under this program be based on the emissions standard or family emissions limit of the engine or, for uncontrolled engines, a baseline emissions rate established by the commission.

The commission proposes to re-letter the existing §114.682(d) as proposed subsection (f) to account for the addition of subsections (d) and (e).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rulemaking is in effect, no significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government.

The proposed rules incorporate program changes as a result of the passage of SB 1731, 85th Texas Legislature, 2017. The proposed rulemaking would revise Chapter 114, Subchapter K, pertaining to rules for several programs established under the TERP. The rulemaking would also repeal rules under Subchapter K that are no longer required under changes made by SB 1731. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

SB 1731 extended the expiration dates of the TERP programs. Instead of establishing specific new expiration dates, SB 1731

extended the programs until the last day of the state fiscal biennium during which the commission publishes in the *Texas Register* notification that the EPA has published in the *Federal Register* that areas in the state are designated attainment or unclassifiable/attainment for NAAQS for ozone, or the EPA has approved a redesignation substitute making a finding of attainment for the area, and judicial reviews of the EPA actions and rules have been completed and upheld the findings or the limitations period to seek judicial review has expired.

SB 1731 also amended the criteria and processes for several of the TERP programs. Major changes made under SB 1731 are further explained.

The criteria for the DERIP under THSC, Chapter 386, Subchapter C, were amended to revise the definition of a small business and to specify that the small business incentives may be implemented through a separate small business grant program or as part of another grant program under Subchapter C. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements.

The name of the DTIP under THSC, Chapter 386, Subchapter D-1, was changed to the Seaport and Rail Yard Areas Emissions Reduction Program. Program criteria were added to include cargo handling equipment and to include repowers as an eligible project category. The requirements pertaining to the model year and nitrogen oxides emissions rate of the old and new vehicle and engine were also amended.

The criteria for the TCSBP under THSC, Chapter 390, were amended to add replacement of an existing school bus with a new school bus as an eligible project category. Other amendments were made to the program requirements.

The definition of the "clean transportation triangle" in THSC, §394.010, was removed and a definition of the "clean transportation zone" was added to THSC, §393.001. The new clean transportation zone includes additional counties that were not part of the previous clean transportation triangle. The references to the clean transportation triangle in the special provisions under the TCFP requirements in THSC, Chapter 392, pertaining to vehicles used for agricultural product transportation were amended to refer to the clean transportation zone.

The provision under the TCFP that an eligible entity that will replace 20 or more diesel vehicles within a 12-month period with qualifying vehicles may apply for a grant was changed to refer to replacement of 10 or more vehicles. Also, the requirement under the TCFP that a grant application include the replacement of at least 20 vehicles was changed to require that at least 10 vehicles be included in the application. In addition, the provisions requiring that a vehicle qualifying for an incentive be certified to current federal emission standards was changed to require that the vehicle be certified to the appropriate current federal emissions standards as determined by the commission. In addition, the requirement that the executive director shall waive certain eligibility requirements on a finding of good cause was changed to state that the executive director may waive the requirements.

SB 1731 also removed the rulemaking requirements for the AFFP under THSC, Chapter 393, and the TNGVGP under THSC, Chapter 394. The rules for these programs only outline some, and not all, possible prioritization criteria for selecting projects under those programs and do not include the more detailed program implementation processes and criteria. Because the rules are no longer required and because the prioritization criteria in the rules provide only general information and not specific direction on implementation of these programs, the rules are not needed in order to effectively implement the programs. Therefore, the commission proposes to repeal the AFFP program rules under §§114.660 - 114.662 and the TNGVGP rules under §§114.670 - 114.672.

The proposed rulemaking would amend the DERIP rules under Subchapter K, Division 3, §§114.620, 114.622, and 114.623. The definition of a "Small business" would be amended to change the requirement that in order to qualify as a small business a person may own no more than two vehicles, to require that a person own not more than five vehicles. The model-year requirements for at least one of the diesel vehicles or equipment owned by a person would also be removed, as well as a change to require that a person have owned the diesel vehicle or equipment for at least two years, instead of the current one-year requirement. Clarifying language would be added specifying that the small business incentives may be implemented through a separate small business grant program or through special consideration to small businesses when implementing another program established under Division 3. The requirement that the executive director shall waive certain eligibility requirements on a finding of good cause would be changed to specify that the executive director may waive the eligibility requirements.

The proposed rulemaking would amend the TCSBP rules under Subchapter K, Division 4, §114.644, and would repeal §114.648. The proposed amendment to §114.644(d) would add a phrase to clarify that the existing requirement that a school bus proposed for retrofit be operated on a regular, daily route to and from a school would apply during the school year. The proposed amendment to §114.644(e) would remove the current requirement that a project that includes the replacement of equipment or a repower include the destruction of the old equipment or engine. In place of that requirement, the commission proposes to add more specific requirements for the school bus being purchased and the school bus being replaced. Under the proposed new requirements, the school bus being replaced would need to be a model year 2006 or earlier, have been owned and operated by the applicant for at least the preceding two years, be in good operating condition, and currently be used on a regular daily route to and from a school during the school year. The replacement school bus would need to be of the current model year or the year before the current model year, and the grant recipient would need to agree to own and operate the bus on a regular, daily route to and from a school during the school year for at least five years. In addition, the school bus being replaced would need to be rendered permanently inoperable or permanently removed from the state to a destination outside of the United States, Canada, or the United Mexican States. The proposed rulemaking would also repeal §114.648, which established an expiration date for Division 4.

The proposed rulemaking would amend the TCFP rules under Subchapter K, Division 5, §§114.650 - 114.653, and would repeal §114.658. The references to the "clean transportation triangle" would be amended to refer to the "clean transportation zone" and the reference to the statutory definition under THSC, §394.010, would be amended to refer to THSC, §393.001. The provision that an eligible entity that will replace 20 or more on-road diesel vehicles within a 12-month period with qualifying vehicles may apply for a grant would be changed to refer to replacement of 10 or more vehicles. Also, the requirement that an application for a grant under the TCFP include replacement of at least 20 vehicles would be changed to require that an application include the re-

placement of at least 10 vehicles. The requirement that a qualifying purchase must be certified to current federal emissions standards would be changed to require that the purchase be certified to the appropriate current federal emissions standards as determined appropriate by the commission. The requirement that the executive director shall waive certain eligibility requirements on a finding of good cause would be changed to specify that the executive director may waive the eligibility requirements. The proposed rulemaking would also repeal §114.658, which established an expiration date for Division 4.

The proposed rulemaking would repeal the AFFP rules under Subchapter K, Division 6, and the TNGVGP rules under Subchapter K, Division 7.

The proposed rulemaking would amend the DTIP rules under Subchapter K, Division, 8, §§114.680 - 114.682. The title of Division 8 would be changed from "Drayage Truck Incentive Program" to "Seaport and Rail Yard Areas Emissions Reduction Program." References in the rules would also be amended to refer to the new program title. The definition of "Cargo handling equipment" would be amended to insert the term "land-based" in the reference to equipment used at a seaport or rail yard. A definition of "Repower" would be added. The requirements that the replacement drayage truck have an engine of model year 2010 or later and the drayage truck being replaced have an engine of model year 2006 or earlier would be removed and new requirements pertaining to the old and new drayage truck or cargo handling equipment would be added, including a requirement that the engine on the replacement drayage truck or cargo handling equipment emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine on the truck or equipment being replaced. New requirements would be added for the engines or motors eligible for the repowering of a drayage truck or cargo handling equipment. New criteria would be added to specify that, unless otherwise determined by the commission, the nitrogen oxides emissions rate of the engines replaced or purchased under the program would be based on the emissions standard or family emissions limit of the engine or, for uncontrolled engines, a baseline emissions rate established by the commission.

The proposed rules extend the expiration dates of the TERP programs and also amend the criteria and processes for several of the TERP programs. No significant fiscal implications are expected for the agency and no fiscal implications are expected for other state agencies or units of local government unless they apply for and receive a grant. Grant application is voluntary. Only those governmental entities that own heavy-duty on-road vehicles, school buses, non-road equipment, marine vessels, locomotives, or stationary equipment and that apply for and receive a grant would be required to comply with the conditions of a grant contract. The proposed rules could result in cost savings for governmental entities who apply for and receive a grant as a percentage of the costs to replace or upgrade vehicles or equipment would be covered by the grant. It is not known how many local governments would apply.

Public Benefits and Costs to Business and Individuals

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be an improvement in air quality in the state's nonattainment areas and other areas of the state where the grant programs are eligible. Also, the rulemaking for the TCSBP will benefit school children in the state by enhancing the existing program to reduce the pollutant concentrations in diesel exhaust.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rules. The proposed rules relate to voluntary incentive programs. Only those entities that own heavy-duty on-road vehicles, non-road equipment, marine vessels, locomotives, or stationary equipment and that apply for and receive a grant would be required to then comply with the conditions of the grant contract.

The proposed rules could result in cost savings for businesses or individuals who apply for and receive a grant as a percentage of the costs to replace or upgrade vehicles or equipment would be covered by the grant. Grant recipients may also experience cost savings from lower fuel and maintenance costs associated with operating newer or upgraded vehicles or equipment.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect a rural community in a material way for the first five years that the proposed rules are in effect. These statewide rules will not affect rural communities in any way different from non-rural communities. These rules involve voluntary grant programs. No direct impact on rural communities will occur as a result of the proposed rulemaking except to the extent an entity in that community applies for and receives a grant.

Small and Micro-Business Impact 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. The proposed rules involve voluntary grant programs. No direct impact on small or micro-businesses will occur as a result of the proposed rulemaking except to the extent a small or micro-business applies for and receives a grant.

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 small or micro-businesses for the first five-year period the proposed rules are in effect.

Government Growth Impact Statement Assessment

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. The proposed rule does not create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; create a new regulation; or expand, limit, or repeal an existing regulation (The proposed rules do amend the criteria and processes for several of the TERP programs and also would repeal rules under Subchapter K that are no longer required under changes made by

SB 1731). The proposed rulemaking does not increase or decrease the number of individuals subject to the rule's applicability, though in some cases more entities may be able to apply for and receive grant funding if they choose to do so. Any impact to the growth of government is a result of the passage of SB 1731 and not of this rulemaking. The rulemaking only proposes changes required to be implemented as a result of the passage of SB 1731.

During the first five years that the proposed rules would be in effect, it is anticipated that there will be a positive impact on the state's economy. The purpose of the programs under these rules is to help maintain and improve air quality in the state's nonattainment areas and other areas of the state where the grant programs are eligible. Also, the rulemaking for the TCSBP will benefit school children in the state by enhancing the existing program to reduce the pollutant concentrations in diesel exhaust.

Helping areas in the state designated nonattainment under the Federal Clean Air Act to reduce pollutant levels below the required federal NAAQS, as well as helping to keep areas from being designated nonattainment, will have a positive impact on the state's economy. The nonattainment designation could have a negative effect on economic growth in a designated area because of additional required controls and impacts on certain industries, businesses, and transportation projects.

In addition, maintaining or improving the quality of life in the state can be expected to further encourage economic growth as many businesses and industries make location decisions based, in part, on the ability to attract qualified employees. Quality of life in the area is one of the factors considered by businesses with making those decisions.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amended Chapter 114 rules are proposed in accordance with SB 1731, 85th Texas Legislature, 2017, which amended THSC, Chapter 386, Subchapter C and Subchapter D-1 and THSC, Chapters 390 and 392 - 394. The proposed rules add or revise guidelines for a voluntary grant. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, none of these amendments place additional financial burdens on the regulated community.

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

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

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §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.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 114 in accordance with the amendments to THSC, Chapters 386, 390 and 392 - 394, as a result of SB 1731, 85th Texas Legislature, 2017. The rules make revisions to a voluntary program and only affect motor vehicles that are not considered to be private real property. The proposed rulemaking does not affect a landowner's rights in private real property because 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 proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordina-

tion Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking for Chapter 114 does not impact any CMP goals or policies because it revises a voluntary incentive grant program and does not govern air pollution emissions.

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 public hearing on this proposal in Austin on December 11, 2017, 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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.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 2017-031-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

## DIVISION 3. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM FOR ON-ROAD AND NON-ROAD VEHICLES

**30 TAC §§114.620, 114.622, 114.623**

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The amendments are proposed as part of the implementation of THSC, Chapter 386, Subchapter C, as amended by SB 1731, 85th Texas Legislature, 2017.

*§114.620. Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division shall have the following meanings, unless the context clearly indicates otherwise.

(1) Cost-effectiveness--The total dollar amount expended divided by the total number of tons of nitrogen oxides emissions reduction attributable to that expenditure. In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(2) Guidelines--*Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) adopted by the commission under Texas Health and Safety Code, §386.053, as amended.

(3) Incremental cost--The cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business and may include added lease or fuel costs as well as additional capital costs.

(4) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(5) Non-road diesel--A vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including: non-road non-recreational equipment and vehicles; construction equipment; locomotives; marine vessels; and other high-emitting diesel engine categories.

(6) Non-road engine--An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment that is intended to be propelled while performing its function, or a piece of equipment designed to be and capable of being carried or moved from one location to another.

(7) On-road diesel--An on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(8) Qualifying fuel--Any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of nitrogen oxides emissions beyond reductions required by state or federal law.

(9) Repower--To replace an old engine powering an on-road or non-road diesel with a new engine; a used engine; a remanufactured engine; or electric motors, drives, or fuel cells.

(10) Retrofit--To equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

(11) Small business--A business owned by a person who:

(A) owns and operates not more than five [~~two~~] vehicles, one of which is:

*(i)* an on-road diesel [~~with a pre-1994 engine model~~]; or

*(ii)* a non-road diesel [~~with an engine with uncontrolled emissions~~]; and

(B) has owned the on-road or non-road diesel for more than two years [~~one year~~].

(12) Stationary engine--A machine used in non-mobile applications that converts fuel into mechanical motion, including turbines and other internal combustion devices.

*§114.622. Incentive Program Requirements.*

(a) Eligible projects include:

(1) purchase or lease of on-road and non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower nitrogen oxides ($NO_x$) emissions;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects;

(8) replacement of on-road and non-road diesels with newer on-road and non-road diesels; and

(9) other projects that have the potential to reduce anticipated $NO_x$ emissions from diesel engines.

(b) For a proposed project as listed in subsection (a) of this section, other than a project involving a marine vessel or engine, a project involving non-road equipment used for natural gas recovery purposes, a project involving replacement of a motor vehicle, or a project involving the purchase or lease of a motor vehicle, not less than 75% of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement.

(c) For a proposed motor vehicle replacement, purchase, or lease project, the period used to determine the emissions reductions and cost-effectiveness of each replacement, purchase, or lease activity included in the project must extend for five years or more, or 400,000 miles, whichever occurs earlier. Not less than 75% of the vehicle miles traveled projected for the period used to determine the emissions reductions must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside of a nonattainment county or affected county to count towards the percentage of use requirement.

(d) For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled or scrapped provided, however, that the executive director may allow permanent removal from the State of Texas in specific grants where the applicant has provided sufficient assurances that the old locomotive will not be returned to the State of Texas.

(e) For a proposed project to replace a motor vehicle, the vehicle and engine must be decommissioned by crushing the vehicle and engine, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the executive director that permanently removes the vehicle and engine from operation in this state. For a proposed project to repower a motor vehicle, the engine being replaced must be decommissioned in a manner consistent with the requirements for decommissioning an engine as part of a vehicle replacement project. The executive director shall allow an applicant for a motor vehicle replacement or repower project to propose an alternative method for complying with the requirements of this subsection.

(f) For a project to replace a motor vehicle, the vehicle being replaced may have been owned, leased, or otherwise commercially financed by the applicant. The applicant must have a legal right to replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) The commission may set cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing $NO_x$ emissions in relation to the funds to be awarded.

(h) The executive director may [~~shall~~] waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in $NO_x$ emissions to the

level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388), apply to the Texas Emissions Reduction Plan program. Notwithstanding the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

*§114.623. Small Business Incentives.*

(a) This section establishes a process to provide fast and simple access to grants for small businesses, either through a separate small business grant program or through special consideration to small businesses when implementing another program established under this division, in accordance with Texas Health and Safety Code, §386.116, as amended.

(b) The grant process for a small business may include:

(1) a simplified grant application and other forms;

(2) pre-approval or pre-authorization of certain types of grant purchases and expenses;

(3) a simplified expense reimbursement process, which may include procedures for the grant recipient to assign grant payments directly to the vendor; and

(4) promotional activities and instructional materials targeted at small businesses to encourage them to participate in the program and to inform them of how to access the grants.

(c) The commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program* (RG-388) shall include details to implement methods identified in subsection (b) of this section.

(d) Other methods for providing fast and simple access to grants for small businesses may be developed through guidelines.

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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## DIVISION 4. TEXAS CLEAN SCHOOL BUS PROGRAM

### 30 TAC §114.644

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 390, which establishes the Texas Clean School Bus Program.

The amendment is proposed as part of the implementation of THSC, Chapter 390, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.644. Clean School Bus Program Requirements.*

(a) Eligible projects include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel; [~~and~~]

(5) other technologies that the commission finds will bring about significant emissions reductions; and[~~.~~]

(6) replacement of a pre-2007 model year school bus.

(b) The commission may limit funding under a particular funding round to certain areas of the state, types of applicants, and/or types of projects. The commission may place a priority on funding for projects conducted in areas that do not attain certain national ambient air quality standards.

(c) Prior to each funding period, the commission may establish priorities and other criteria for reductions in diesel exhaust emissions to be achieved by projects funded during that period, including designation of additional pollutants to be addressed. A proposed project must achieve a reduction in emissions of diesel exhaust compared with the baseline emissions according to the percentage reduction level and other priorities established by the commission. The commission may also establish maximum levels for the funding awarded in relation to the emission reductions projected to be achieved by a project, in order to maximize the use of available funds.

(d) A school bus proposed for retrofit must be used on a regular, daily route to and from a school during the school year and have at least five years of useful life remaining unless the applicant agrees to

remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(e) A school bus proposed for replacement must: [~~For a proposed project that includes a replacement of equipment or a repower, the old equipment or engine must be recycled, scrapped, or otherwise permanently removed from the State of Texas.~~]

(1) be of model year 2006 or earlier;

(2) have been owned and operated by the applicant for at least two years before submission of the grant application;

(3) be in good operational condition; and

(4) be currently used on a regular, daily route to and from a school during the school year.

(f) A school bus proposed for purchase to replace a pre-2007 model year school bus must be of the current model year or the year before the current model year at the time of submission of the grant application.

(g) A school bus acquired to replace an existing school bus must be purchased and the grant recipient must agree to own and operate the school bus on a regular, daily route to and from a school during the school year for at least five years after a start date established by the commission, which will be based on the date the commission accepts documentation of the permanent destruction or permanent removal of the school bus being replaced.

(h) A school bus replaced under this program must be rendered permanently inoperable by crushing the bus, by making a hole in the engine block and permanently destroying the frame of the bus, or by another method approved by the commission, or be permanently removed from the state to a destination outside of the United States, Canada, or the United Mexican States.

(i) [~~(f)~~] An application for a grant under this program is only eligible if it is made on the form provided by the commission and contains the information required by the commission.

(j) [~~(g)~~] A recipient of a grant under this division shall use the grant to pay incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(k) [~~(h)~~] Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(l) [~~(i)~~] A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document or the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(m) [~~(j)~~] If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

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

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**30 TAC §114.648**

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 390, which establishes the Texas Clean School Bus Program.

The repeal is proposed as part of the implementation of THSC, Chapter 390, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.648. Expiration.*

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## DIVISION 5. TEXAS CLEAN FLEET PROGRAM

**30 TAC §§114.650 - 114.653**

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 392, which establishes the Texas Clean Fleet Program.

The amendments are proposed as part of the implementation of THSC, Chapter 392, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.650. Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural product transportation--The transportation of a raw agricultural product from the place of production using a heavy-duty on-road vehicle to:

(A) a nonattainment area;

(B) an affected county as defined under Texas Health and Safety Code (THSC), §386.001;

(C) a destination inside the clean transportation zone [~~triangle~~] established under THSC, §393.001 [~~§394.010~~]; or

(D) a county adjacent to a county described by subparagraph (B) of this paragraph or that contains an area described by subparagraph (A) or (C) of this paragraph.

(2) Alternative fuel--A fuel, other than gasoline or diesel fuel. When used in this division, this definition is limited to the following: electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85% methanol by volume.

(3) Eligible entity--Any person or entity with a fleet of 75 or more vehicles that:

(A) are registered in Texas; and

(B) include at least 10 [~~20~~] vehicles that are eligible for replacement.

(4) Golf cart--A motor vehicle designed by the manufacturer primarily for transporting persons on a golf course.

(5) Heavy-duty vehicle--A motor vehicle with a gross vehicle weight rating greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency's heavy-duty engine standards.

(6) Hybrid vehicle--A motor vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(7) Light-duty motor vehicle--A motor vehicle with a gross vehicle weight rating of less than 10,000 pounds and certified to the United States Environmental Protection Agency's light-duty vehicle emission standards.

(8) Motor vehicle--A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

(9) Neighborhood electric vehicle--A motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 Code of Federal Regulations §571.500);

(B) is a slow-moving vehicle, as defined by Texas Transportation Code, §547.001 that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(10) Program--The Texas Clean Fleet Program established under this division.

*§114.651. Applicability.*

(a) Any eligible entity that will replace 10 [~~20~~] or more on-road diesel vehicles within a 12-month [~~twelve-month~~] period with qualifying vehicles may apply for a grant under the Texas Clean Fleet Program to offset the cost of replacing those vehicles with alternative fuel or hybrid vehicles.

(b) Notwithstanding subsection (a) of this section, an entity that submits a grant application for 10 [~~20~~] or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

(c) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Local Government Code, Chapter 391, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

*§114.652. Qualifying Vehicles.*

(a) A qualifying vehicle is one that:

(1) is certified to the appropriate current federal emissions standards as determined by the commission;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) As a condition of receiving a grant the qualifying vehicle must be continuously owned, registered, and operated in Texas by the grant recipient until the earlier of the fifth anniversary of the date of reimbursement of the grant-funded expenses or until the date the vehicle has been in operation for 400,000 miles after the date of reimbursement.

(c) A vehicle is not a qualifying vehicle if it:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a grant under this division for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

*§114.653. Grant Eligibility.*

(a) To be eligible for a grant under the program a project must result in nitrogen oxide emission reductions of at least 25%, based on:

(1) the baseline emission level set by the executive director; and

(2) the certified emission rate of the new vehicle or engine.

(b) The vehicle being replaced must:

(1) be an on-road vehicle that has been owned, leased, or otherwise commercially financed, and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(2) satisfy any minimum average annual mileage or fuel usage requirements established by the executive director;

(3) satisfy any minimum percentage of annual usage requirements established by the executive director; and

(4) be in operating condition with at least two years of remaining useful life, as determined in accordance with criteria established by the executive director.

(c) At the discretion of the executive director, projects that result in a 25% reduction in other pollutants may be considered eligible for funding under this program.

(d) The executive director may establish additional criteria for purposes of prioritizing projects for selection. Such criteria may include, but are not limited to:

(1) nonattainment status of the primary location in which the eligible vehicles are used; or

(2) cost per ton benefits of the overall emissions being reduced.

(e) The executive director may [~~shall~~] waive the requirements of subsection (b)(1) of this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(f) In establishing more specific requirements or additional criteria, as authorized under this section, for projects related to agricultural product transportation, the executive director shall use as a determining factor for eligibility for participation in the program established under this division the overall accumulative net reduction in nitrogen oxide emissions in a nonattainment area, an affected county, or the clean transportation zone [~~triangle~~].

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

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**30 TAC §114.658**

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repeal is also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan, and THSC, Chapter 392, which establishes the Texas Clean Fleet Program.

The repeal is proposed as part of the implementation of THSC, Chapter 392, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.658. Implementation Schedule.*

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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## DIVISION 6. ALTERNATIVE FUELING FACILITIES PROGRAM

**30 TAC §§114.660 - 114.662**

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of

this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repealed rules are proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 393, which establishes the Alternative Fueling Facilities Program.

The repealed rules are proposed as part of the implementation of THSC, Chapter 393, Subchapter D, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.660. Purpose.*
*§114.661. Criteria for Prioritizing Facilities Eligible to Receive a Grant.*
*§114.662. Implementation Schedule.*

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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## DIVISION 7. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

**30 TAC §§114.670 - 114.672**

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The repealed rules are proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan; and THSC, Chapter 394, which establishes the Texas Natural Gas Vehicle Grant Program.

The repeal is proposed as part of the implementation of THSC, Chapter 394, as amended by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.670. Purpose.*
*§114.671. Criteria for Prioritizing Vehicles eligible to Receive a Grant.*
*§114.672. Implementation Schedule.*

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## DIVISION 8. DRAYAGE TRUCK INCENTIVE PROGRAM

**30 TAC §§114.680 - 114.682**

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan program.

The amendments are proposed as part of the implementation of THSC, Chapter 386, Subchapter D, established by Senate Bill 1731, 85th Texas Legislature, 2017.

*§114.680. Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or land-based equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Repower--To replace an old engine powering a vehicle with a new engine, a used engine, or a remanufactured engine, or electric motors, drives, or fuel cells.

(7) [~~(6)~~] Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

*§114.681. Applicability.*

The provisions of §114.680 and §114.682 of this title (relating to Definitions and Eligible Vehicle Models) apply to the Seaport and Rail Yard Areas Emissions Reduction Program [~~Drayage Truck Incentive Program~~] established and implemented under Texas Health and Safety Code, Chapter 386, Subchapter D-1.

*§114.682. Eligible Vehicle Models.*

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds;

(2) a non-road yard truck; and

(3) other cargo handling equipment.

(b) Models of existing drayage trucks eligible for replacement or repower under the program include:

(1) a heavy-duty on-road vehicle with a GVWR over 26,000 pounds;

(2) a non-road yard truck; and

(3) other cargo handling equipment.

(c) To be eligible for purchase under this program a drayage truck or cargo handling equipment must: [~~To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.~~]

(1) be powered by an electric motor or contain an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(2) emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine on the truck or equipment being replaced.

(d) To be eligible for purchase under the program an engine or motor repowering a drayage truck or cargo handling equipment must:

(1) be powered by electricity or be an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(2) emit nitrogen oxides at a rate that is at least 25% less than the emissions rate of the engine being replaced.

(e) Unless otherwise determined by the commission, the nitrogen oxides emissions rate of engines replaced or purchased under this program will be based on the emissions standard or family emissions limit to which the engine is certified or, for replacement of an uncontrolled engine, a baseline emissions rate established by the commission.

(f) [~~(d)~~] The executive director may place additional limits on vehicle models and engine model years eligible for purchase and replacement under the program for a particular grant round in order to improve the effectiveness and further the goals of the program.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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## CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§334.2, 334.4, 334.6, 334.7, 334.10, 334.19, 334.42, 334.45 - 334.52, 334.54, 334.55, 334.72, 334.74, 334.123 - 334.125, 334.127, 334.208, 334.407, 334.424, 334.491, 334.496, 334.499, 334.602, 334.603, and 334.605.

Background and Summary of the Factual Basis for the Proposed Rules

In 1988, the United States Environmental Protection Agency (EPA) promulgated underground storage tank (UST) regulations (40 Code of Federal Regulations (CFR) Part 280), which set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or remove those not in compliance. The same year, EPA also promulgated regulation for state program approval (SPA) (40 CFR Part 281), which allows states to administer and enforce the regulation of USTs.

Chapter 334 originally became effective on September 29, 1989. The purpose of the original rulemaking was to allow Texas to operate an independent UST program in lieu of federal regulation through the SPA under 40 CFR Part 281, Approval of State Underground Storage Tank Programs. To obtain program approval, certain federal requirements for storage tanks in 40 CFR Part 280 were incorporated into Texas's UST program.

TCEQ and its predecessor agencies amended Chapter 334 on November 8, 1995; December 27, 1996; February 14, 1997; October 22, 1997 (Petroleum Storage Tank (PST) Reimburse-

ment Program); December 10, 1998 (Emergency and Temporary Orders); September 23, 1999 (Texas Risk Reduction Program); March 21, 2000 (PST Program (House Bills (HBs) 2109, 2815, and 2816); July 12, 2001 (PST Cleanup); December 17, 2001 (HB 3111 and Quadrennial Review of Chapter 290); April 2, 2002 (Remediation of Underground and Aboveground Storage Tanks (AST)), November 18, 2004 (Petroleum Storage Tank Rules); November 9, 2006 (Senate Bill (SB) 486 and HB 1987, PST Rule Revisions), October 30, 2008 (Regulation, Remediation and Financial Assurance of ASTs and USTs); March 19, 2009 (Remediation of Leaking Petroleum Storage Tank sites); March 17, 2011 (PST Operator Training); June 30, 2011; and April 19, 2012 (HB 2694).

On July 15, 2015, EPA updated its UST regulations under 40 CFR Part 280, with an effective date of October 13, 2015. EPA's stated purpose for the updated regulations was to revise the 1988 UST regulation to more closely resemble key provisions of the Energy Policy Act of 2005 (EPAct). The revisions strengthened the 1988 UST standards by increasing the emphasis of properly maintained and operated UST equipment, with the purpose of limiting environmental and human health risks associated with UST systems. In addition, EPA also updated SPA requirements in 40 CFR Part 281 to incorporate the changes to the UST technical regulations in 40 CFR Part 280. These amended regulations were the first major revisions to the federal UST rules since becoming effective in 1988.

The scope of this current rulemaking is to amend Chapter 334 to incorporate federal rule revisions required under EPA's SPA rules for USTs. These revisions include: additional secondary containment requirements for new and replaced tanks and piping; revision of operator training requirements; and additional periodic operation and maintenance requirements for UST systems. In addition, the revised federal regulations added requirements for UST systems deferred in the original 1988 federal UST regulation; added new release prevention and detection technologies; and updated and expanded codes of practice. The revised federal regulations also made editorial corrections and technical amendments.

Current Chapter 334 rules are more stringent than the original 1988 federal UST regulation. For example, Texas has already implemented additional requirements for secondary containment and operator training that meet the requirements of the revised federal regulations. In addition, Chapter 334 meets federal requirements for emergency generator tank systems and containment sumps that require regular inspection, documentation of initial groundwater and vapor monitoring site assessment, notification of ownership change, and Statistical Inventory Reconciliation (SIR) as an approved method of release detection. While these requirements were included in the 2015 amendments to 40 CFR Part 280, Texas has previously adopted these requirements, and the proposed rulemaking incorporates into Chapter 334 those federal requirements that have not yet been adopted.

To meet the new requirements of 40 CFR Parts 280 and 281, changes are proposed to Chapter 334 including 30-day walkthrough inspections of sump and spill buckets, three-year containment sump and spill prevention equipment testing, annual inspections of overfill prevention equipment, and annual testing of release detection equipment.

Consistent with the stated goals of the 2015 federal amendments, the purpose of the amendments to Chapter 334 is to further diminish the environmental and human health risks associated with USTs with a focus on the proper operation and maintenance of the safety mechanisms used in UST systems. Moreover, these amendments account for technological advances the UST industry has undergone since the 1988 UST regulations were promulgated, including technology which detects releases from UST systems deferred in the 1988 UST regulations. Altogether, the combination of modern UST technology, mandated periodic testing of UST safety equipment, and focus on the operation and maintenance of UST facilities will meet the stated purpose of diminishing environmental and human health risks associated with USTs and ensure consistency with the federal requirements.

In addition, changes are proposed to §334.19, Fee on Delivery of Petroleum Product, to conform to amendments to the Texas Water Code (TWC). HB 7, 84th Texas Legislature (2015), amended TWC, §26.3574(b) and (b-1), to clarify the calculation method of the petroleum products delivery fee. Additional minor rule revisions related to the fee on the delivery of certain petroleum products are proposed to conform to the amendment to TWC, §26.3574, by SB 1557, 85th Texas Legislature (2017). The revisions include changing the term "operator of a bulk facility" to "supplier" such that the supplier would now collect the fees on delivery of a petroleum product.

Finally, this rulemaking proposes minor administrative changes. These administrative changes reflect the agency's 2002 name change from the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Commission on Environmental Control (TCEQ) and to correct grammatical and spelling errors.

Section by Section Discussion

*Administrative Amendments*

The commission proposes administrative amendments to various sections of Chapter 334. The proposed rulemaking includes various stylistic, non-substantive amendments to update rule language to current Texas Register style and format requirements. Administrative amendments are not substantive and are being proposed to ensure the consistency, clarity, and accuracy of information within Chapter 334. Sections with only administrative amendments being proposed are §§334.208, 334.407, 334.424, 334.496, 334.499, 334.602, and 334.603. Additional sections contain administrative amendments, but generally these will not be specifically addressed in the Section by Section Discussion. The proposed administrative amendments include but are not limited to: correcting minor grammatical, spelling, and typographical errors; standardizing the use of acronyms; updating section references; and updating the commission's name.

*§334.2, Definitions*

Paragraphs were renumbered to reflect changes to the definitions within this section. Other non-substantive and grammatical updates were made to comply with *Texas Register* requirements.

The commission proposes amending and moving the definition "ACT" from existing §334.2(5) to proposed §334.2(12), and adding "Association for Composite Tanks" to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes adding the definition "Airport hydrant system" to §334.2(6). This term is used to reflect the language used in the federal regulations in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and moving the definition "ANSI" from §334.2(9) to §334.2(8), and adding "American National Standards Institute" to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes amending and moving the definition "API" from existing §334.2(10) to proposed §334.2(9), and adding "American Petroleum Institute" to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes amending and renumbering the definition "ASTM" from §334.2(12) to §334.2(13), to accurately reflect the name change of the organization to ASTM International.

The commission proposes amending and renumbering the definition "Beneath the surface of ground," from §334.2(15) to §334.2(16) by removing the phrase, "so that visual inspection is precluded." The commission proposes amending and renumbering "Underground storage tank" from §334.2(115) to §334.2(120) by adding "or otherwise covered with material so that visual inspection is precluded." This proposed change is made to clarify that the visual inspection requirement is for the tank and the preclusion is not limited to soil, but includes, for example, ground cover, gravel, concrete or other material.

The commission proposes amending and moving the definition "CERCLA" from §334.2(17) to §334.2(23), and adding "Comprehensive Environmental Response, Compensation, and Liability Act" to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes adding the definition "Containment sump" as §334.2(25). This term reflects the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and renumbering the definition "Corporate fiduciary" from §334.2(24) to §334.2(26), by updating the names of state and federal agencies that have changed their names since Chapter 334 was first promulgated. The changes are proposed to show current chartering entities and facilitate accurate reference.

The commission proposes adding the definition "Dispenser" to §334.2(33). This term reflects the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and renumbering the definition "Field-constructed tank" from §334.2(39) to §334.2(42), to reflect the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and renumbering the definition, "Motor fuel" from §334.2(59) to §334.2(62) to reflect the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and renumbering the definition of "NACE International" from §334.2(60) to §334.2(63) to accurately reflect the updated term and improve clarity.

The commission proposes amending and moving the definition "NFPA" from §334.2(62) to §334.2(64) and adding "National Fire Protection Association" to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes adding the definition "New dispenser" as §334.2(65). The previous definition was in §334.45(d)(1)(E)(v) and is being amended and moved to §334.2(66). The purpose of moving the definition is to maintain consistency with other definitions in Chapter 334 and define the term in the §334.2, Definitions, as opposed to §334.45, Technical Standards for New Underground Storage Tank Systems. In addition, the commission proposes to amend the definition of "New dispenser" by removing §334.45(d)(1)(E)(v)(I), "any dispenser which is installed where none previously existed." The purpose of the proposed amendment is clarification. This phrase is redundant with §334(d)(1)(E)(v)(II), such that it is not be possible to install a dispenser where none previously existed without also installing the transitional piping components. The proposed amendment of previous §334(d)(1)(E)(v)(II) moved to §334.2(65) serves to simplify the requirements without being less stringent. In addition, the proposed amended definition of "New dispenser" now reflects the amended language used in 40 CFR Part 280.

The commission proposes amending and renumbering the definition of "On the premises where stored" from §334.2(68) to §334.2(72), to reflect the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and moving the definition "Owner" from §334.2(73) to §334.2(77), and correcting the reference from TWC, §25.3516 to TWC, §26.3516 in order to facilitate finding the relevant statutory provision.

The commission proposes amending and moving the definition "PEI" from §334.2(74) to §334.2(80) and adding "Petroleum Equipment Institute," to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes amending and renumbering the definition "Person" from §334.2(76) to §334.2(79), and replacing the definition with a reference to 30 TAC §3.2 to ensure consistency with other regulatory use of the term.

The commission proposes amending and renumbering the definition "Petroleum substance" from §334.2(81) to §334.2(85) and by changing the letter "O" to a zero so that "gas-turbine fuel oil" accurately reflects "Grade-0." The proposed change corrects a typographical error.

The commission proposes adding the definition "Replaced" to §334.2(99) to reflect the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and renumbering the definition "Septic tank" from §334.2(99) to §334.2(104) and replacing the definition with a reference 30 TAC §285.2 to ensure consistency with other regulatory use of the term.

The commission proposes amending and renumbering the definition "STI" from §334.2(102) to §334.2(107) and adding "Steel Tank Institute" to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes amending renumbering, moving, and combining the definitions "Stormwater collection system" from §334.2(103) and "Wastewater collection system" from §334.2(122), to create a new definition for "Stormwater or wastewater collection system" in §334.2(108). The purpose of this amendment is to simplify existing language by combining two definitions that are similar in substance and purpose.

The commission proposes amending and moving the definition "UL" from §334.2(112) to §334.2(121) and adding "Underwriters Laboratories, Inc. (UL)," to accurately reflect the acronym, the alphabetical order, and improve clarity.

The commission proposes adding the definition "Under-dispenser containment (UDC)" to §334.2(117). This term is used to reflect the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes amending and renumbering the definition "Underground storage tank" from §334.2(114) to §334.2(119), by adding the phrase "or otherwise covered with material so that visual inspection is precluded" in order to be consistent with the definition "Beneath the surface of ground" in §334.2(16). This proposed change is made to clarify that the visual inspection requirement is for the tank and the preclusion is not limited to soil, but includes, for example, ground cover, gravel, concrete or other material.

The commission proposes amending and renumbering the definition "Used oil" from §334.2(118) to §334.2(124). This term is used to reflect the language used in 40 CFR Parts 280 and 281. Using terminology consistent with federal regulations promotes clarity for the regulated community by streamlining compliance strategies and allowing the regulated community to comply with both state and federal law simultaneously.

The commission proposes removing the definitions "UST" in §334.2(119) and "UST system" in §334.2(120) since these terms are included in the definitions for "Underground storage tank" in §334.2(119) and "Underground storage tank system" in §334.2(120). Removing these as definitions is proposed to eliminate duplicative entries.

*§334.4, Exclusions for Underground Storage Tanks (USTs) and UST Systems*

The commission proposes amending §334.4(b) by adding language to exclude certain listed USTs from certain operator training, on-site supervisor licensing, and contractor registration requirements. The purpose of this amendment is to exclude certain USTs from these requirements because the commission has determined that operator training is not necessary for the operation of the listed USTs. Operator training covers technical standards geared toward the storage of motor fuels which do not apply to the listed USTs. Therefore, owners and operators of wastewater treatment tanks do not need to be trained on standards that do not apply. Operator training requirements are also not required by federal UST rules for the listed USTs. The listed USTs are also excluded from on-site supervisor licensing and contractor registration requirements since the technical standards supervisors and contractors would administer do not apply.

*§334.6, Construction Notification for Underground Storage Tanks (USTs) and UST Systems*

The commission proposes amending §334.6(a)(3) by adding "zones or contributing zone within a transition zone" to clarify the applicability of requirements for agency approval regarding certain regulated construction activities occurring over the Edwards Aquifer. This additional language serves to specify that the requirements in 30 TAC §213.22 apply to the overlapping area of the contributing zone within the transition zone. The commission has also changed the preposition preceding "Edwards Aquifer" from "in" to "on" to mirror the language used in §213.22.

The commission proposes adding §334.6(b)(1)(A)(ix) in which switching to a regulated substance containing greater than 10% ethanol or greater than 20% biodiesel is now considered a major construction activity and subject to 30-day notice requirements. The purpose of the proposed amendment is to address fuel-tank compatibility concerns and ensure owners and operators who switch to biofuel have appropriate technology in place to safely contain these types of regulated substances.

The commission proposes amending §334.6(b)(2)(C) and (3) to exempt proposed §334.6(b)(1)(A)(ix) from requirements relating to reporting initiation or rescheduling of switching to biofuel. These amendments are being proposed because a compatibility determination for the UST system can be evaluated during on-site periodic inspections; therefore, notifying the regional office is unnecessary when regulated substances are switched to biofuel.

*§334.7, Registration for Underground Storage Tanks (USTs) and UST Systems*

The commission proposes amending §334.7(a)(1)(C) by replacing the language "effective date of this subchapter" with "September 29, 1989," the original effective date of the subchapter. The purpose of the amendment is to more clearly identify which USTs the exception applies to.

The commission proposes amending §334.7(b) and (c) by replacing the language "effective date of this subsection" with "November 23, 2000," the effective date of the subsection. The purpose of this amendment is to provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

The commission proposes adding §334.7(d)(1)(C)(i) and (ii) to specify that switching to a regulated substance greater than 10% ethanol or 20% biodiesel is considered a change or additional information about a UST system which requires written notice be sent to the agency. The purpose of these additions is to account for compatibility concerns related to the storage of biofuels and to ensure the commission is provided with information regarding significant changes.

The commission proposes amending §334.7(e)(6) by replacing the language "effective date of this paragraph" with" November 23, 2000," the effective date of the paragraph. The purpose of this amendment is to provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

*§334.10, Reporting and Recordkeeping*

The commission proposes amending §334.10(a)(2) by removing "recharge and transition zones" and adding language to specify reporting requirements which apply to the regulated zones of the Edwards Aquifer. The commission determined that the previous language did not adequately capture all the regulated zones of the Edwards Aquifer, specifically the overlapping area of the contributing zone within the transition zone. The purpose of amending this paragraph is to clarify to which zones of the Edwards Aquifer existing requirements in §334.6 apply.

The commission proposes amending §334.10(b)(2)(B)(iv) by adding language to specify that operation and maintenance records should now include reports from periodic testing and walkthrough inspection. The purpose of this amendment is to account for the new walkthrough inspection and periodic testing requirements proposed in §334.42 and §334.48 and to ensure the agency is provided with the appropriate records to make a determination of compliance.

*§334.19, Fee on Delivery of Petroleum Product*

An erroneous citation error in §334.19(a) is corrected in the rule as a reference to TWC, specifically TWC, §26.3573 is amended to the appropriate citation TWC, §26.3574. Additionally, in §334.19(a) the phrase "operator of a bulk facility" is amended to "supplier" such that the supplier would now collect the fees on delivery of a petroleum product in accordance with changes made to TWC, §26.3574 by SB 1557, 85th Texas Legislature, 2017.

The commission proposes amending §334.19(a)(1) - (5) so that the maximum fee amounts match those currently in TWC, §26.3574 (i.e., "not more than $3.75 for each delivery" etc.). Please note, however, that this rule proposal does not raise the fee amounts that are currently in effect. TCEQ continues to set the actual fee by *Texas Register* publication, according to the process described in current §334.19(b): "TCEQ may adjust the fee rates in subsection (a) of this section through an appropriate notification process, such as but not limited to *Texas Register* publication with public comment, based on the agency's cost of administering this chapter, but not to exceed the maximum rates set by Texas Water Code, §26.3574." The current fee rates were published in 2015, by TCEQ, in the *Texas Register* on August 28, 2015 (40 TexReg 5513). That publication stated that "effective September 1, 2015, the fees are $1.70 for each delivery into a cargo tank or a barge having a capacity of less than 2,500 gallons; $3.45 for 2,500 to 5,000 gallons; $5.45 for 5,000 to 8,000 gallons; $6.95 for 8,000 to 10,000 gallons; and $3.45 for each increment of 5,000 gallons delivered into a cargo tank or barge having a capacity of more than 10,000 gallons."

Additionally, the commission proposes amending §334.19(b) by adding the phrase, "in accordance with TWC, §26.3574(b-1)," to further clarify the methodology by which the fee is calculated. The proposed amendment to §334.19(a)(1) - (5) also removes the June 30, 2012, date from the section, as that phase-in date is no longer relevant.

*§334.42, General Standards*

The commission proposes amending §334.42(a) to require that UST systems are maintained, in addition to being designed, installed, and operated, in a manner that will prevent releases. The purpose of this amendment is to require maintenance to help prevent releases, and impacts to human health and the environment.

The commission proposes amending §334.42(b) to specify which components of UST systems are subject to the compatibility requirements. The commission also proposes providing examples of industry standards and practices which can be used to comply with this subsection. The purpose of these amendments is to provide the regulated community with clear, updated, and adequate information which can be used to facilitate compliance with the regulations.

The commission also proposes adding §334.42(b)(1) - (3) which lists the methods owners and operators may use to demonstrate compliance with compatibility requirements. The purpose of this amendment is to specify the various options that owners and operators can use to demonstrate compliance to the agency.

The commission proposes amending §334.42(i) to require only the removal of liquid and debris found in sumps and spill prevention equipment within 96 hours, rather than requiring both the removal and disposal of liquid and debris within 96 hours. Based on the small amount of waste generally found during inspections, the commission determined that it was not necessary to require disposal within the short-time period. The commission has determined that, if handled properly, the material may be safely accumulated onsite prior to disposal and that such accumulation is regulated by waste rules in 30 TAC Chapters 330 and 335 (relating to Municipal Solid Waste and Industrial Solid Waste and Municipal Hazardous Waste, respectively). By allowing the regulated community to accumulate waste material onsite, overall effort and disposal costs may be reduced due to the ability to accumulate and dispose one larger amount of waste, rather than being required to repeatedly dispose small amounts of waste.

Additionally, the commission is proposing that amended §334.42(i) be effective through December 31, 2020. Thereafter, the proposed requirements listed in §334.48(h) shall become effective. The purpose of providing an effective date is to allow §334.42(i) to continue regulating the sump inspections in the interim period until the new walkthrough inspection requirements in §334.48(h) become effective.

*§334.45, Technical Standards for New Underground Storage Tank Systems*

The commission proposes amending §334.45(a)(1) and (e)(4)(A) and (B) by replacing the language "the effective date of this subchapter" with "September 29, 1989," which was the original effective date of the subchapter. The purpose of this amendment is to provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

The commission proposes amending §334.45(b)(1)(A) - (F) to make minor corrections to the titles of existing industry standards and practices and to add new standards and practices which may be used to comply with the section. The purpose of the amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes moving §334.45(b)(1)(D)(iv), (E)(iv), and (F)(iv) to §334.45(b)(1)(D)(iii), (E)(iii), and (F)(iii), respectively. These relocations are proposed to improve the logical sequence of the regulations by placing technical requirements (electrical isolation from all other metallic structures), §334.45(b)(1)(D)(iv), (E)(iv), and (F)(iv), above the list of industry standards and practices, §334.45(b)(1)(D)(iii), (E)(iii), and (F)(iii).

The commission proposes amending §334.45(c)(1)(A) - (C) by modifying the accepted industry standards and practices as follows: making minor corrections to the titles of existing standards and practices, removing outdated standards and practices, and adding newly accepted standards and practices which may be used to comply with this section. The purpose of the amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes amending §334.45(d)(1)(A) to remove language referencing §334.44 because the dates within §334.44 have passed and are no longer applicable.

The commission proposes amending §334.45(d)(1)(B) to add the phrase "or contributing zone within the transition zone" to clarify the applicability of the requirement mandating the use of double-wall tank and piping systems (or approved alternative) for any UST system situated on the regulated zones of the Edwards Aquifer as prescribed in §213.22. The commission has added language to specify that requirements apply to the overlapping area of the contributing zone within the transition zone in accordance with the requirements in §213.22. The commission also proposes amending §334.45(d)(1)(B) to mirror the language in §213.22 in order to promote consistency among rules related to the Edwards Aquifer.

The commission proposes amending §§334.45(d)(1)(E)(iv), (vi), (vii), and (viii)(II) to clarify that dispenser sumps are included within the respective requirements which reference "sumps."

The commission proposes amending §334.45(d)(1)(E)(iv) and (vi) by replacing language referring to UST systems with release detection systems by interstitial monitoring with language referring to interstitial monitoring of piping to improve clarity. The existing language was determined by the commission to be unnecessarily lengthy and potentially unclear. The purpose of the amendment is to improve the brevity and clarity of the regulation for the benefit of the regulated community without making any substantive changes.

The commission proposes amending §334.45(d)(1)(E)(iv) by adding references to dispenser sumps, interstitial monitoring, and §334.42 and §334.48, which include new requirements relating inspections. The purpose of this amendment is to refer to the change for sumps and manways inspections from at least once every 60 days until December 31, 2020, to at least once every 30 days beginning January 1, 2021. The compliance date is extended to allow owners and operators time to implement compliance strategies. The purpose of the more frequent inspections is to identify and help prevent releases and minimize impacts to human health and the environment.

The commission proposes amending §334.45(d)(1)(E)(v) by adding language to reference the definition of "New dispenser" in §334.2 and to add new compatibility, installation, and inspection requirements for new dispensers and dispenser sumps. The purpose of this amendment is to ensure that new dispensers are contained by dispenser sumps intended to contain spills from leaking or dripping hoses or fittings within the dispenser cabinet.

The commission proposes removing and replacing the definition of new dispenser found in §334.45(d)(1)(E)(v)(I) and (II) with the definition of "New dispenser" in §334.2(65) in order to promote consistency in the placement of definitions within Chapter 334.

The commission proposes amending §334.45(d)(1)(E)(vii) to require only the removal of liquid and debris found in sumps and spill prevention equipment within 96 hours rather than requiring both the removal and disposal of liquid and debris within 96 hours. The commission has determined, if handled properly, the material may be safely accumulated onsite prior to disposal and that such accumulation is regulated by waste rules in Chapters 330 and 335. By allowing the regulated community to accumulate waste material onsite, overall effort and disposal costs may be reduced due to the ability to accumulate and dispose one larger amount of waste, rather than being required to repeatedly dispose small amounts of waste. As long as waste is handled properly, this allows flexibility to the regulated community to reduce disposal costs without an increased risk to human health or the environment.

*§334.46, Installation Standards for New Underground Storage Tank Systems*

The commission proposes amending §334.46(a), (g), (g)(3)(B)(iii) and (iv), and (h)(1) by replacing "the effective date of this subchapter" with September 29, 1989, which was the original effective date of the subchapter. The purpose of this amendment is to replace the reference with the original effective date, which will provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

The commission proposes amending §334.46(a)(1) by modifying the accepted industry standards and practices as follows: removing outdated standards and practices and adding newly accepted standards and practices which may be used to comply with the section. The purpose of this amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes amending §334.46(h)(1) by removing §334.46(h)(1)(A) because it applied to a period of time that has now passed and by consolidating §334.46(h)(1)(B), requiring UST system installations to be completed by an installer licensed by the agency, into §334.46(h)(1). The purpose of this amendment is to update and simplify the existing rule in order to provide clarity and facilitate compliance.

The commission proposes amending §334.46(h)(1)(A) by removing requirements that are no longer required since they apply to a period that has passed and are accounted for in the amendment to §334.46(h)(1), and amending §334.46(h)(1)(B) by removing requirements that have been consolidated into §334.46(h)(1) and are also accounted for in the amendment.

*§334.47, Technical Standards for Existing Underground Storage Tank Systems*

The commission proposes adding §334.47(a)(1)(C), to include National Fire Protection Association Standards 30 and 30A to the list of accepted standards and practices which may be used to comply with the section. The purpose of the amendment is to reflect the most current, relevant, and accepted industry standards and ensure consistency with federal regulations.

The commission proposes amending §334.47(e)(2)(B) and (C) to replace the language "the effective date of this subchapter" with "September 29, 1989," the effective date of the subchapter. The purpose of this amendment is to replace the reference with the original effective date, which will provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

*§334.48, General Operating and Management Requirements*

The commission proposes amending §334.48(c) to replace the language "the effective date of this subchapter" with "September 29, 1989," the effective date of the subchapter. The purpose of this amendment is to replace the reference with the original effective date, which will provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

The commission also proposes amending §334.48(e) to require annual release detection equipment testing for electronic and mechanical components. Language that was previously in this subsection required that owners and operators conduct periodic monitoring of release detection equipment, but specific equipment and specific timelines were not identified. The commission proposes replacing the previous language with language providing specific details and requirements to ensure specific release detection equipment is inspected at least annually and is functioning as expected to prevent or mitigate releases.

The commission proposes adding §334.48(e)(1) to incorporate a new annual testing requirement for release detection equipment and the requirement's effective date. The purpose of this amendment is to ensure specific release detection equipment is tested annually to ensure proper functionality.

The commission proposes adding §334.48(e)(1)(A) - (E) to specify the release detection equipment and criteria that is subject to the new annual testing requirement. The purpose of this amendment is to provide additional detail to the regulations in §334.48(e)(1).

The commission proposes adding §334.48(e)(2) to specify the accepted standards and practices which may be used to comply with the section. The purpose of the amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations

The commission proposes relettering §334.48(g) to §334.48(j) to allow for the inclusion of new requirements as amended §334.48(g) - (i). The purpose of this amendment is to account for the rules added in §334.48(g) - (i) while ensuring the structure of the section remains logical and consistent.

The commission proposes amending §334.48(g) to add new requirements regarding periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment. These changes are necessary to comply with the amended requirements of 40 CFR Parts 280 and 281. The new requirements will require triennial testing on spill prevention equipment and containment sumps used for interstitial monitoring to ensure they are liquid tight. In addition, the new requirements will require overfill prevention equipment to be inspected for proper function and activation. The purpose of these amendments is to require periodic testing and inspection of UST system equipment to mitigate the likelihood of a release to the environment should liquid enter the containment area or collect in spill buckets should the tanks be overfilled.

The commission proposes adding §334.48(g)(1) to introduce the requirements for UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring or piping.

The commission proposes adding §334.48(g)(1)(A) to introduce the requirements for spill prevention equipment and containment sumps. The purpose of this amendment is to ensure equipment used to contain liquid which may collect around the fill pipe is liquid tight in order to prevent releases to the environment.

The commission proposes adding §334.48(g)(1)(A)(i) and (ii) to specify the methods which can be used to comply with requirements for periodic testing of spill prevention equipment. The regulated community is provided with the option to either install double-walled spill buckets and containment sumps and use periodic monitoring, or conduct triennial testing on single-walled equipment through one of several methods. Among the options for triennial testing, the commission proposes adding a low liquid level method of testing in §334.48(g)(1)(A)(ii)(I) - (IV), which mirrors an EPA-approved alternative that allows for a reduced amount of water to be used for periodic hydrostatic testing. The purpose of this amendment is to reduce the quantity of contaminated water generated by the testing, to reduce the costs of testing and disposal to the regulated community, and to add additional flexibility in achieving compliance while still ensuring the proper maintenance and operation of UST equipment.

The commission proposes adding §334.48(g)(1)(A)(iii) to allow liquids used for sump testing, as described in §334.48(g)(1)(A)(ii), to be reused to liquid test other sumps at the same facility or at other facilities. In addition, the commission proposes adding language to specify the regulations under which a discharge of test water may be made. The purpose of this amendment is to reduce the quantity of contaminated water generated by the testing and to reduce the costs of testing and disposal to the regulated community while still ensuring the proper maintenance and operation of UST equipment. The agency will develop guidance to address best management practices after the rule is adopted.

The commission proposes adding §334.48(g)(1)(B) to specify inspection requirements for overfill prevention equipment and the frequency at which inspections shall occur. The purpose of this addition is to ensure that overfill prevention equipment is set to function correctly and prevents releases into the environment which may occur due to inadvertent overfilling of the UST.

The commission proposes adding §334.48(g)(1)(C) to incorporate newly accepted standards and practices which may be used to comply with §334.48(g)(1)(A)(ii)(II) and (B). The purpose of the amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes to add §334.48(g)(2) to introduce the implementation dates of the requirements within subsection §334.48(g).

The commission proposes adding §334.48(g)(2)(A) and (B) to specify the implementation dates for the requirements within §334.48(g). Two distinct groups are created with differing implementation dates: UST systems in use on or before September 1, 2018, and UST systems which come into use after September 1, 2018. The purpose of creating two different groups is to phase in implementation of the regulations for UST systems in use on or before September 1, 2018, which will be given three years to make process changes to achieve compliance with the new regulations. UST systems which come online after September 1, 2018, are expected to comply with the new regulations upon the effective date. September 1, 2018, has been proposed because the adopted rules are expected to be published in the *Texas Register* in May 2018, and the commission has determined that three months is sufficient time to allow the regulated community to become familiar with the requirements prior to the

compliance date. In addition, the commission proposes adding §334.48(g)(2)(A)(ii) and (B)(ii) to specify when the initial testing and inspections must be conducted. The purpose of adding the initial testing and inspection requirements is to clarify the specific date when the first test or inspection shall be required.

The commission proposes adding §334.48(g)(3) to introduce new recordkeeping requirements for activities related to spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment.

The commission proposes adding §334.48(g)(3)(A) and (B) to specify the types of records and the length of time that those records must be kept concerning spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment. The purpose is to ensure the commission is provided with adequate information to ensure compliance with requirements.

The commission proposes §334.48(h) to add new requirements for periodic operation and maintenance walkthrough inspections of UST system equipment. These changes are necessary to comply with the requirements of 40 CFR Parts 280 and 281. The commission proposes an implementation date of January 1, 2021, for the new inspection requirements because the rules, if adopted, are expected to be published in the *Texas Register* in May 2018, and almost three years is a reasonable amount of time for the regulated community to prepare for the implementation of walkthrough inspections of UST systems prior to the rules taking effect. The purpose of this amendment is to require routine inspection of UST system equipment to prevent or mitigate a release to the environment should equipment be damaged, leak, or otherwise malfunction.

The commission proposes adding §334.48(h)(1) which will introduce periodic operation and maintenance walkthrough inspection requirements.

The commission proposes adding §334.48(h)(1)(A) to establish new 30-day periodic operation and maintenance walkthrough inspection requirements. These inspections must be conducted every 30 days and cover certain types of equipment and conditions. The proposed requirements closely reflect the language used in 40 CFR Parts 280 and 281. However, the commission proposes modifying the federal requirements regarding disposal of liquid or debris found in spill prevention equipment. A similar requirement exists in §334.42(i) of the existing regulations. That rule currently requires the removal and disposal of this waste material within 96 hours. However, the commission has proposed transferring that requirement into the new periodic walkthrough inspections section, §334.48(h)(1)(A)(i), which has a compliance due date of January 1, 2021. Additionally, the commission determined that it was not necessary to require disposal within the 96-hour time period because only a small amount of waste is generally found during inspection. The commission has determined that the material can safely be accumulated onsite prior to disposal, and such accumulation would be regulated by waste rules in Chapters 330 and 335. By allowing the regulated community to accumulate waste material onsite, overall effort and disposal costs may be reduced due to the ability to accumulate and dispose one larger amount of waste, rather than being required to repeatedly dispose small amounts of waste.

The commission proposes amending §334.48(h)(1)(A) by adding an exception to the periodic operation and maintenance walkthrough inspections for UST systems which do not receive fuel deliveries at intervals greater than every 30 days. The commission recognizes 30-day inspections at these sites would be unnecessary as the spill prevention equipment would not have been utilized by the fuel delivery company between some of the 30-day inspections. These facilities may inspect after each fuel drop. The purpose of this addition is to provide an exception for lower volume facilities and to avoid requiring unnecessary inspections at these types of facilities.

The commission proposes adding §334.48(h)(1)(B) to establish requirements for annual periodic operation and maintenance walkthrough inspections. These inspections must be conducted annually and cover certain types of equipment and conditions. These changes are necessary to comply with the requirements of 40 CFR Parts 280 and 281. The commission proposes modifying federal requirements regarding certain containment sumps such that older containment sumps will not be required to be watertight. Containment sumps installed before January 1, 2009, were not required to be watertight and, therefore, could not now be expected to prevent water from seeping in from the outside. The commission is, therefore, proposing inspection requirements that achieve the goal of mitigating and preventing releases by creating four distinct categories of equipment with different required annual inspections (as listed in §334.48(h)(1)(B)(i) - (iv)). These categories include containment sumps (pre and post-2009 installation), sites that have no containment sump, and hand-held release detection equipment. The purpose of these additions is to provide reasonable and appropriate requirements for the installed equipment at a UST.

The commission proposes adding §334.48(h)(2) to allow for the use of a standard code of practice developed by a nationally recognized association to satisfy the new inspection requirements in §334.48(h)(1) so long as it is no less stringent than the requirements in §334.48(h)(1)(A). The purpose of the addition is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes adding §334.48(i) to introduce new requirements for periodic inspections of airport hydrant systems. These changes are necessary to comply with the new requirements in 40 CFR Parts 280 and 281.

The commission proposes adding §334.48(i)(1) and (2) to specify the inspection requirements for specific areas. The purpose of these additions is to ensure that hydrant pits and hydrant piping vaults are undamaged, empty of debris and liquid, and are not leaking, which serves to protect human health and the environment.

The commission proposes amending §334.48(j), existing §334.48(g), by specifying additional requirements regarding which types of information must be kept in inspection records mandated by §334.10(b). The new records are meant to cover recordkeeping for the expanded walkthrough inspection requirements in §334.48(h). The purpose of this amendment is to ensure the agency is provided with the appropriate documentation to ensure compliance with the regulations.

*§334.49, Corrosion Protection*

The commission proposes adding §334.49(c)(4)(B)(i) - (v) to incorporate newly accepted standards and practices which may be used to comply with cathodic protection inspection and testing requirements in this section. The purpose of the amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

*§334.50, Release Detection*

The commission proposes amending §334.50(b)(2)(B)(i) which will specify applicability to tanks and/or piping installed prior to January 1, 2009. The purpose of the amendment is to clarify regulations regarding methods of release detection that may be used by tanks or piping installed prior to January 1, 2009. In addition, the commission has proposed amendments in other subsections that will modify the release detection requirements for tanks and piping installed on or after January 1, 2009. The commission determined that it was necessary to clarify that the release detection methods in §334.50(b)(1)(A), (2)(A)(ii) and (B)(i) apply only to tanks installed prior to January 1, 2009.

The commission proposes adding §334.50(b)(1)(B) and (2)(A)(iii) and (c)(4)(B) to specify interstitial monitoring as a mandatory primary method of release detection for tanks installed on or after January 1, 2009. The existing rules in §334.45(d)(1)(E) required tanks, lines, and/or dispensers installed on or after January 1, 2009, to be secondarily contained and monitored. However, the existing rules in §334.45(d)(1)(E) did not previously mandate that UST systems use interstitial monitoring for release detection. The purpose of this amendment is to require interstitial monitoring be used for release detection in those UST systems by September 1, 2018, which will make these systems subject to new walkthrough inspection, and periodic testing and inspection requirements in §334.48(g) and (h), respectively. These changes are necessary to comply with the requirements of 40 CFR Parts 280 and 281.

The commission proposes amending and/or adding §334.50(b)(1)(A) and (B), (2)(A)(ii)(II) and (III) and (iii), (B)(i)(II) and (ii), (d)(1)(B)(ii) and (iii)(IV), (d)(3), (C)(i)(III), (iii) and (iv), (4)(A)(iii)(I) and (II) and (B)(iv), (5)(C) and (F)(ii), (6)(E)(ii), (7)(B) and (C), (8)(B) and (C), and (9)(A)(iii) and (iii)(V) to change the frequency of monitoring to a 30-day period from a monthly period (not to exceed 35 days). The purpose of these amendments and additions is to create a time frame for monitoring that more quickly detect releases and is consistent with the requirements of 40 CFR Parts 280 and 281.

The commission proposes amending and/or adding §334.50(b)(1)(A) and (B), (2)(A)(ii) and (iii), (B)(i) and (ii), (c)(4)(A) and (B), to specify a date for each rule which states the applicability of the rule based on the installation date of the tank. In addition, for tanks and piping installed on or after January 1, 2009, language was added to require the use of interstitial monitoring as a release detection method no later than September 1, 2018. The purpose of this amendment was to fully implement the periodic testing and walkthrough inspection requirements in §334.48(g) and (h) which have specific requirements for facilities which use interstitial monitoring for release detection. By requiring UST systems with tanks and/or piping installed on or after January 1, 2009, to use interstitial monitoring for a release detection method, the commission intends these facilities to become subject to requirements for periodic testing and walkthrough inspection requirements. The implementation date of September 1, 2018, was chosen because it allows a delay of about three months from the expected date of rule adoption, and matches the implementation for newly installed UST systems in §334.48(g)(2).

Additionally, the commission proposes amending existing §334.50(b)(1)(C) by moving the requirements for manual tank gauging within the same paragraph and reorganizing the requirements to fit into proposed §334.50(b)(1)(B) - (D). The purpose of this amendment is to improve clarity of the rule language. The commission proposes adding §334.50(b)(1)(B), and removing §334.50(b)(1)(B)(i) - (ii). A combination of tank tightness testing and inventory control was an acceptable form of release detection until December 22, 1998, as long as certain criteria were met. The proposed revisions remove this method of release detection as the deadline has passed. The commission proposes adding §334.50(b)(1)(B) to include updates corresponding to §334.50(d)(7), which require the use of approved interstitial monitoring release detection methods. The commission proposes adding §334.50(b)(1)(D) to include updates corresponding to §334.50(d)(3), which allow for 30-day tank gauging to be used as the sole source of release detection for emergency generator tanks. This method is sufficient because emergency generators are typically used infrequently. Since the commission proposes updating release detection requirements for tanks, the commission also proposes making corresponding updates to release detection requirements for piping by adding §334.50(b)(2)(A)(iii). These updates are in recognition of the latest technical advances which allow releases to be prevented and detected more quickly. A compliance deadline of September 1, 2018, is being proposed, which will give the regulated community adequate time to procure and install equipment.

The commission proposes amending §334.50(b)(2)(B)(ii) to require suction lines be tested or monitored for releases at a frequency of not less than every 30 days instead of what was previously required (monthly (not to exceed 35 days)). The purpose of this amendment is to create a more regular and consistent time frame for monitoring, which improves the commission's ability to gain compliance and enforce the regulations, and allows releases to be more easily detected and prevented.

The commission proposes amending §334.50(b)(2)(B)(iii)(III) to clarify and make more enforceable the limit of one check valve per line. The purpose of the amendment is to remove any ambiguity and provide clarification for the regulated community.

The commission proposes amending §334.50(c)(3) to remove "and monitoring" to reflect the fact that the requirements of this subsection only concern the design, construction, installation, and maintenance of secondary containment. Monitoring of secondary containment is included in §334.50(d).

The commission proposes amending §334.50(c)(3)(A) by incorporating it into §334.50(c)(3) and adding "(relating to Technical Standards for New Underground Storage Tank Systems; and Installation Standards for New Underground Storage Tank Systems)." The purpose of the amendment is to add language clarifying which requirements the noted citations reference.

The commission proposes adding §334.50(c)(4) to create a "Release detection" paragraph and relocating language previously in §334.50(c)(3)(B) to proposed §334.50(c)(4). The purpose of this amendment is to reorganize the requirements such that there is a clear section for dealing with release detection for hazardous UST systems. In addition, language is proposed for §334.50(c)(4)(A) and (B) to require interstitial monitoring as the method of release detection for tanks installed after January 1, 2009, and to require compliance by September 1, 2018. The purpose of the addition is to clarify requirements related to certain UST systems and to detect releases more quickly.

The commission proposes amending §334.50(d)(1) to remove "testing" and add the word "requirements." The purpose of this amendment is to remove any ambiguity and provide clarification for the regulated community.

The commission proposes amending §334.50(d)(1)(B)(i) to incorporate an industry standard which may be used to comply with the rule. The purpose of this amendment is to provide interested parties with resources which may be useful in compliance with the requirements.

The commission proposes amending §334.50(d)(4) to replace the term "and" with "in combination with" to clarify that these two methods must be used together in order to satisfy release detection requirements.

The commission proposes adding §334.50(d)(4)(A)(iii) and (I) and (II) to include new requirements for automatic tank gauge (ATG) testing. Requirements concerning operating modes and monitoring frequencies are included. The purpose of these additions is to account for new technology since the previous requirements were adopted and to detect releases more quickly.

The commission proposes amending §334.50(d)(4)(B) and (B)(iv) to include used oil tanks in requirements previously applicable only to emergency generator tanks and to clarify that inventory control is not required for these types of tanks with ATG equipment. Inventory control typically is not feasible on used oil tanks because used oil tanks lack dispensers, which makes daily physical measurement unduly burdensome, and because tank levels do not always change from day to day. To account for more flexible regulations on used oil tanks while remaining protective of human health and the environment, an additional requirement is proposed for ATG's utilized in used oil tank systems. The purpose of this additional requirement is to ensure the ATG equipment is capable of accurately monitoring water levels at a level specified by the commission.

The commission proposes amending §334.50(d)(9) to clarify that SIR must be used in combination with inventory control in order to be a sufficient method of release detection.

The commission additionally proposes amending §334.50(d)(9)(A)(ii) by relocating inventory control analysis requirements in proposed §334.50(d)(9)(A)(ii)(I). The purpose of this amendment is to account for a new SIR methodology requirement proposed by adding §334.50(d)(9)(A)(ii)(I) and (II).

The commission proposes adding §334.50(d)(9)(A)(ii)(I) and (II) to relocate language from §334.50(d)(9)(A)(ii) and to include a new requirement which mandates a minimum allowable threshold that may be used in SIR methodology. The purpose of requiring a minimum allowable threshold is to improve the quality of release detection calculations.

The commission additionally proposes amending §334.50(d)(9)(A)(iii)(IV) to require SIR reports to include the date that the SIR analysis was conducted. The purpose of this amendment is to ensure agency personnel can make an accurate determination of compliance with release detection requirements. Renumbering was required to change existing §334.50(d)(9)(A)(iii)(IV) to §334.50(d)(9)(A)(iii)(V), and existing §334.50(d)(9)(A)(iii)(V) to §334.50(d)(9)(A)(iii)(VI).

The commission proposes amending §334.50(d)(10) to correct a typographical error by changing paragraphs "(1) - (8)" to paragraphs "(2) - (9)."

The commission proposes adding §334.50(e)(2)(F) to specify that site assessment vapor monitoring and groundwater monitoring records are subject to recordkeeping requirements, and that records must be signed by an appropriate licensed professional with experience in a relevant technical discipline. The purpose of this amendment is to ensure owners and operators maintain adequate documentation of monitoring to demonstrate that a release has not occurred. This documentation is necessary to determine compliance with other relevant requirements prohibiting releases.

*§334.51, Spill and Overfill Prevention and Control*

The commission proposes amending §334.51(a)(5) by removing a reference to §334.42(d) and adding §334.51(a)(5)(A) - (C) to include accepted industry standards and practices which may be used to comply with this section. The purpose of the amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes amending §334.51(a)(6) to specify that spill and overfill prevention equipment must be monitored or tested in accordance with §334.48(g) and (h). The purpose of this amendment is to ensure interested parties are aware of the new requirements implicated by the language.

The commission proposes amending §334.51(b)(1) by clarifying that all UST systems, without regard to date of installation, are required to be in compliance with this subsection for the entire operational lives of the UST systems. The purpose of this amendment is to simplify existing language.

The commission proposes removing §334.51(b)(1)(A) and (B) because the proposed amendment to §334.51(b)(1) makes these paragraphs unnecessary.

The commission proposes amending §334.51(b)(2)(C)(ii) to prohibit flow restrictor devices from being used as a method of overfill prevention installed and replaced after September 1, 2018. The purpose of this amendment is to prevent flow restrictor devices from being installed at new facilities or as replacement equipment because the commission has determined that flow restrictor devices are not as reliable as other overfill prevention methods.

The commission proposes amending and reorganizing §334.51(b)(4). The commission proposes removing §334.51(b)(4)(B) since the deferral date of December 22, 1998, has passed. The commission proposes renumbering existing §334.51(b)(4)(A)(i) - (iii) to §334.51(b)(4)(A) - (C), respectively.

The commission proposes amending §334.51(c)(2)(B) to add records related to inspection, monitoring, and testing to the existing list of records which are required to be maintained. The purpose of this amendment is to more fully specify what records owners and operators are required to keep and to ensure the commission has appropriate documentation to ensure compliance with new requirements to prevent spills and overfill events.

*§334.52, Underground Storage Tank System Repairs and Relining*

The commission proposes adding §334.52(a)(3)(A) - (H) and §334.52(b)(4)(B)(i) - (iii) to list accepted industry standards and practices. The purpose of these additions is to provide interested parties with resources which may be useful in understanding repair and relining requirements. The commission proposes amending §334.52(a)(3) and (b)(4)(B) to introduce newly added industry standards and practices listed in §334.52(a)(3)(A) - (H) and §334.45(b)(4)(B)(i) - (iii), respectively, and which may be used to comply with the respective sections. The purpose of this amendment is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

The commission proposes renumbering §334.52(d) to §334.52(e) and amending to §334.52(d) introduce new requirements regarding tank system and ancillary equipment repairs.

The commission proposes adding §334.52(d)(1) and (2) which lists the requirements for testing and inspection of repaired components of UST systems. Additionally, the new paragraphs specify that these requirements must be met within 30 days of the completed repair. The purpose of this addition is to require that repaired components be properly tested after repair to ensure proper operation. Proper operation is necessary to prevent impacts to human health and the environment.

*§334.54, Temporary Removal from Service*

The commission proposes adding §334.54(b)(3) to exempt temporarily out of service UST systems, as defined within the section, from spill and overflow operation and maintenance testing, and walkthrough inspections. The commission recognizes UST systems which are temporarily out of service have different testing and inspection requirements from those in operation.

The commission proposes amending §334.54(d) to reorganize information within the subsection and to add an exemption from new requirements. These amendments include: moving the language which previously followed "Empty system" to §334.54(d)(1); amending §334.54(d)(2) by creating a paragraph solely dedicated to the definition of "empty" as it pertains to temporarily out of service tanks; and moving the language which was previously §334.54(d)(1) - (3) to §334.54(d)(2)(A) - (C) and adding a reference to release detection to §334.50(d)(2)(A). The purpose of these amendments is to reorganize existing language to incorporate the addition of language in §334.54(d)(1)(B) to exempt temporarily out of service UST systems from the release detection operation and maintenance testing and inspections as listed in §334.48(e)(1) if the UST systems meet the definition of empty. The purpose of this amendment is ensure that empty UST systems are not required to test and inspect release detection which is not being used.

*§334.55, Permanent Removal from Service*

The commission proposes amending §334.55(a)(8) and (9) and §334.55(e)(1)(A) and (B) to replace "the effective date of this subchapter" with the actual date the subchapter became effective, September 29, 1989. The purpose of this amendment is to replace the reference with the actual date which will provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

The commission proposes revising §334.55(b)(2), (4)(A) and (C) to require that owners and operators obtain prior approval from TCEQ regional offices instead of district offices when engaging in activities related to the removal of tanks (e.g., storing, emptying, cleaning, or purging). The purpose of these revisions is to accurately reflect the current structure of the TCEQ and remove the outdated reference to the TNRCC organizational structure.

The commission proposes revising the recordkeeping requirements in §334.55(f)(2) for USTs permanently removed from service. Owners and operators are required to maintain records as long as any UST remains in service or for five years after the UST is removed, whichever is longer. However, various other sections in Chapter 334 require that owners and operators maintain records as long as a UST remains in service. Therefore, the commission proposes removing the recordkeeping requirements related to in-service USTs from this subsection while retaining a five-year recordkeeping requirement for USTs permanently removed from service, which is consistent with commission record retention requirements elsewhere in this chapter. These records are necessary in order to support compliance determinations and demonstrate that any impact to human health and the environment has been addressed when a UST is permanently removed from service.

The commission proposes adding §334.55(g)(1) - (5) to list the newly accepted standards and practices which may be used to comply with the section. The purpose of the additions is to provide the regulated community with updated and adequate information which can be used to comply with the regulations.

*§334.72, Reporting of Suspected Releases*

The commission proposes amending §334.72(2) to add "or liquid in the interstitial space of secondarily contained systems which serves" to further specify instances that may qualify as "unusual operating conditions." Liquid (intended to cover water, product, or other substances in the liquid-phase) in the interstitial space that is not used for interstitial monitoring indicates there is a problem with the UST system which requires attention and resolution. As a result, the commission is including this as an unusual operating condition and proposes requiring UST owners and operators to investigate and address the condition in order to minimize impacts to the environment and human health.

The commission proposes adding §334.72(2)(A) - (C) to incentivize a prompt response to suspected releases by reducing reporting requirements as long as owners and operators take prompt action to investigate and respond to a suspected release.

The commission proposes amending §334.72(3) to add "including investigation of an alarm," to the conditions that would require a suspected release investigation. The purpose of an alarm is to alert UST owners and operators of a potential problem. Once alerted, owners and operators must respond and appropriately address all release detection monitoring alarms. Due to the additional interstitial monitoring requirements proposed in this rulemaking, there will be an increase in the use of interstitial monitoring and a potential increase in the number of alarm events. For example, some interstitial monitoring systems may trigger an alarm, which indicates that there may be a potential release or that the interstitial space may have been compromised. The commission has determined that owners and operators should not be required to report alarms from defective system equipment or components, alarms that are investigated and determined to be a non-release, or leaks which are contained in the interstitial space. However, the commission still proposes requiring owners and operators to investigate and repair problems that may be discovered.

The commission proposes amending §334.72(3)(B) to specify a reference to §334.50(d)(1)(B), the monitoring period for inventory control as being a "30-day period" rather than a "month," and to add "or the alarm investigation determines no release has occurred." The purpose of these amendments is to ensure compliance with new requirements elsewhere in the chapter, create a more regular and consistent time frame for testing, and add an exception for possible technical glitches.

The commission proposes adding §334.72(3)(C)(i) and (ii) to specify the instances when leaks found contained in secondary containment do not require agency notification.

The commission proposes amending §334.72(3)(C)(i) by requiring agency notification in cases when liquid that meets the

criteria in §334.50(d)(8)(C) is found in secondary containment. However, the commission recognizes that leaks found contained in secondary containment that do not meet the criteria in §334.50(d)(8)(C) do not require agency notification, so long as the problem is remedied.

The commission proposes amending §334.72(3)(C)(ii) by not requiring agency notice in situations where defective system equipment or components are responsible for causing a leak within the secondary containment but are immediately replaced or repaired. The commission recognizes mechanical failures occur, but that repairing the faulty component or equipment sufficiently resolves the issue.

The commission proposes adding §334.72(3)(D) to specify that alarms investigated and determined to be non-releases do not require agency notice. The commission recognizes technical glitches may occur and, if immediately resolved, do not require the attention of the agency.

The commission proposes removing §334.72(4) because the requirements are duplicative of the requirements in §334.72(2) and (3).

*§334.74, Release Investigation and Confirmation Steps*

The commission proposes amending §334.74(1) to add a reference to the proposed amended secondary containment testing in §334.48(e). The purpose of this amendment is to ensure interested parties are aware of all requirements which are implicated by this paragraph and the language which follows.

The commission proposes amending §334.74(1)(A) to introduce the requirements for system tests following a suspected release. The commission proposes adding §334.74(1)(A)(i) and (ii) to list the specific requirements for a system test conducted in response to a suspected release. These additions require a determination of whether a leak exists in the portion of the tank which routinely contains product or attached delivery piping, or if a breach of either wall of the secondary containment has occurred. The purpose of these additions is to ensure that system tests cover all portions of the UST system which may have resulted in the release to help prevent a reoccurrence.

The commission proposes renumbering §334.74(1)(A) - (C) to §334.74(1)(B) - (D), respectively, to account for the added amendment.

The commission proposes amending §334.74(1)(B), existing §334.74(a)(A), to add language specifying the applicability to system tests which confirm a leak into the interstice or a release. The purpose of this amendment is to limit the applicability to only situations where a system test confirms a leak.

*§334.123, Exemptions for Aboveground Storage Tanks (ASTs)*

The commission proposes inserting a hyphen in the term "noncommercial" in §334.123(a)(1) to be consistent with §334.2.

The commission proposes amending §334.123(b)(1)(A) by removing the reference to the Natural Gas Pipeline Safety Act of 1968, and moving the reference to the Hazardous Liquid Pipeline Safety Act of 1979 from §334.123(b)(1)(B) to §334.123(b)(1). This removal is proposed because the controlling statute, TWC §26.344, was amended by SB 901 during the 83rd Texas Legislature (effective September 1, 2013), and no longer includes a reference to the Natural Gas Pipeline Safety Act of 1968.

*§334.124, Exclusions for Aboveground Storage Tanks (ASTs)*

The commission proposes amending §334.124(a)(2) to alter the time frame of inspection from once a month to 30 days. The purpose of this amendment is to be consistent with other sections of the rules where monthly time frames are proposed to change to 30 days, such as throughout §334.50, and to create a more regular and consistent time frame for monitoring in order to prevent and more quickly detect releases.

*§334.125, General Prohibitions and Requirements for Aboveground Storage Tanks (ASTs)*

The commission proposes amending §334.125(a) to replace "the effective date of this subchapter" with "June 25, 1990," which is the effective date of the subchapter. The purpose of this amendment is to replace the reference with the actual date, which will provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

*§334.127, Registration for Aboveground Storage Tanks (ASTs)*

The commission proposes amending §334.407(c) by removing the March 1, 1990, effective date. The purpose of this amendment is to provide clarity for the regulated community since this date has passed.

*§334.491, Notice to Owners or Operators*

The commission proposes amending §334.491(a) to replace "the effective date of these rules" with "December 27, 1996," which was the original effective date of this section. The purpose of this amendment is to replace the reference with the actual date, which will provide clarity for the regulated community and help ensure consistent compliance and enforcement determinations.

*§334.605, Operator Training Frequency*

The commission proposes adding §334.605(d) to specify that notwithstanding the training requirements in §334.605, Class A and Class B operators must be re-trained by April 1, 2019, with a course submitted to and approved by the agency after April 1, 2018. The purpose of this amendment is to require re-training of operators after the new rules become effective so operators can be adequately informed on the new regulations.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, analyst in the Chief Financial Officer Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of the administration or enforcement of the proposed rules. No fiscal implications are anticipated for other units of state or local government unless they own or operate USTs. Costs for these units of state or local government will be the same as those for businesses that own or operate USTs and will include additional costs for three-year overfill prevention equipment testing, annual release detection equipment testing, and waste or wastewater management costs generated from the testing.

The proposed rules incorporate specific EPA rules and are necessary in order for the State of Texas to be consistent with federal UST rules and the EPAct, 2005. The proposed revisions increase the emphasis on proper operation and maintenance of UST equipment, address UST systems deferred in the 1988 regulation, incorporate current technologies and practices, and make technical and editorial corrections. The proposed rulemaking will update Chapter 334 to include these federal rule revisions so that the State of Texas is able to reapply to EPA for SPA.

The proposed rules will add requirements for 30-day walk-through inspections, three-year overfill prevention equipment testing, and annual release detection equipment testing. The rulemaking also proposes minor revisions relating to the fee on delivery of petroleum products and the funding of the Petroleum Storage Tank Remediation (PSTR) Account 655 that were implemented in 2015 as a result of the passage of HB 7, 84th Texas Legislature, 2015.

HB 7, amended TWC, §26.3574(b-l), to change the calculation method of the petroleum products delivery fee, which funds the PSTR account. HB 7 required the agency to exclude amounts appropriated by the Legislature for monitoring or remediation of PST releases occurring on or before December 22, 1998, when setting the petroleum product delivery fee. The PST program had used approximately $10.8 million of appropriated funds from Account 655 to manage the cleanup of releases that occurred on or before December 22, 1998. The provisions in HB 7 would require that the unexpended balance in the account be used to fund monitoring and cleanup of the remaining sites with releases reported to the commission on or before December 1998 and, therefore, decrease the fund balance of the PSTR account by approximately $10.8 million each year. Fee rates may need to be adjusted in future years to ensure adequate funding to address additional new sites that may become a state obligation (because the owner/operator is either financially unable, cannot be found, or is unwilling).

Under the EPAct, 2005, over 6,000 UST facilities should be investigated annually to meet the three-year inspection cycle prescribed by the EPAct, with the current triennial cycle beginning on October 1, 2016, and ending on September 30, 2019. Federal funds have been used to fund the required investigation activities. The ability to make substantial progress toward meeting the three-year inspection cycle will be contingent on continued federal funding.

In December 2012, EPA presented an updated allocation formula for distribution of Leaking UST (LUST) grant dollars to the states. The formula included a base grant dollar amount (decreased beginning Fiscal Year (FY) 14 from $288,000 to $250,000) plus a percentage to represent the overall calculated need of each state. Beginning in 2013, EPA informed the commission that the available funding for the LUST grant would be cut by 14%, from $1,981,000 to $1,710,354, and then cut further in subsequent years. The match for this grant funding is 75% Federal/25% State. While the commission previously "carried-forward" grant fund balances after each FY into the new FY, EPA informed the commission that carry forward would no longer be allowed beginning FY 16, and that additional funding given to the State of Texas in previous years would no longer be available.

Given the large number of USTs in Texas and its geographic size, along with population growth and an increasing universe of UST facilities, meeting the inspection requirement of the EPAct is challenging. Based on recent correspondence and discussion with EPA, it is understood that EPA is currently unable to provide any additional federal funds beyond the base UST grant to address Texas' unique circumstances with regard to the EPAct. Funding will continue to be a critical factor in meeting the requirements in the EPAct, 2005. Also, there may be additional agency costs when a more comprehensive investigation is needed and additional enforcement actions are necessary.

Since FY 2011, an intergovernmental contractor has been utilized to coordinate and perform EPAct investigations annually in Texas on behalf of the commission. Currently, there are a total of 18 contracted investigator positions (through the University of Texas at Arlington (UTA)) utilized to perform activities pursuant to EPAct compliance investigations. Additionally, there are two contracted enforcement coordinator positions for the UTA contract to assist with work on commission PST enforcement cases.

In addition to work performed under the UTA state-wide contract, beginning in 2015, efficiencies were instituted for performance of Stage II PST investigations to allow for credit under EPAct requirements due to the relationship between Stage I, Stage II, and EPAct requirements. In doing so, work performed by agency staff and locally administered programs funded through contracts began to contribute to satisfying EPAct requirements in addition to the work performed under the UTA state-wide contract. These locally administered programs, or local air programs, include the City of Dallas, City of Fort Worth, City of El Paso, Galveston County, and UTA operating within the city limits of Houston.

For FY 16, the equivalent of 44 full-time positions (FTEs) participated in the commission's PST investigation program. While the commission did not utilize grant dollars for employee salaries, the 25% match required for the LUST grant was provided by commission staff performance of an equivalent amount of investigations funded with state PST dollars. Additionally, when performing an investigation at a facility eligible for an EPAct investigation, state funded FTEs make a concerted effort to ensure the investigation scope satisfies minimum EPAct requirements.

The intergovernmental contractor will coordinate and perform EPAct investigations on behalf of the commission under a contract worth approximately $1.3 million in federal funds for FY 2017. If the agency does not receive similar levels of federal funding in future years, the agency will likely not be able to meet the investigation requirements of the EPAct unless other sources of funding become available.

Fiscal implications are anticipated for other units of state and local government who own or operate underground PSTs. These owners and operators will have additional costs for 30-day walkthrough inspections, three-year overfill prevention equipment testing, annual release detection equipment testing, and waste or wastewater management costs generated from the testing. Affected entities would include state agencies, cities, counties, school districts, navigation districts, transportation authorities, and others. Agency staff estimate that there would be at least 873 registered underground PST facilities that would be affected by the proposed rules.

The commission used EPA's cost estimates for elements of the rule that are new to Texas. Based on EPA's unit costs, for an average gas station with three tanks, three spill buckets, and four dispensers, the average cost is $5,355, with approximately $2,841 as a one-time costs, $2,301 as operation and maintenance costs, and $213 in repair/replacement costs. Approximately half of the operation and maintenance costs would be annual costs with the remaining occurring every three years. This cost estimate does not include disposal costs for waste or wastewater generated as a result of new testing requirements which could double the costs.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with federal law and the enhanced protection of the en-

vironment and public health and safety through the prevention of releases of regulated substances to the environment from underground PSTs.

Fiscal implications are anticipated for businesses and individuals as a result of the administration or enforcement of the proposed rules. Owners and operators of PSTs at gas stations and other facilities such as fleet refueling stations and airports will be impacted. These owners and operators will have additional costs for walkthrough inspections, three-year overfill prevention equipment testing, annual release detection equipment testing, and waste or wastewater management costs generated from the testing.

Texas has approximately 20,000 active (in-use or temporarily out of service) registered underground PST facilities, many with multiple tanks on their facilities. EPA provided estimated costs for the rule implementation when they published the final revisions to the UST Regulations in July, 2015.

The commission used EPA's cost estimates for elements of the rules that are new to Texas. Some federal requirements were already in place in Chapter 334. EPA's cost estimate did not include disposal costs for waste or wastewater generated as a result of new testing requirements. During stakeholder meetings, concerns were raised that for owners/operators that choose hydrostatic testing as an option, costs could be significant. Stakeholders further commented that although the federal regulations allow for vacuum or hydrostatic testing, vacuum testing has already been determined not to be a viable option. Stakeholders believe that the expense to properly dispose of test water can be as much as or exceed the cost of the test.

Based on EPA's unit costs, for an average gas station with three tanks, three spill buckets, and four dispensers, the average cost is estimated to be $5,355, with approximately $2,841 as one-time costs, $2,301 as operation and maintenance costs, and $213 in repair/replacement costs. Approximately half of the operation and maintenance costs would be annual costs with the remaining occurring every three years.

Not all facilities are subject to EPAct investigations; therefore, the actual number of facilities subject to the rules could be less than the registered 20,000 underground PST facilities. This cost estimate does not include disposal costs for waste or wastewater generated as a result of new testing requirements which could double the costs.

A link to EPA's Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Revisions to UST Regulations can be found here: (https://www.epa.gov/sites/production/files/2015-07/documents/regs2015-ria.pdf).

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rules do 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 proposed rules will not affect rural communities in any way different from non-rural communities for the first five years that the proposed rules are in effect. There are approximately 1,103 cities or towns with a population of 25,000 or less. There are approximately 6,291 regulated entities with PSTs in these rural municipalities. Costs to businesses in these communities will be the same as those for businesses in larger communities. Requirements for businesses that own or operate PSTs in rural communities must be consistent with federal regulations in order for Texas to maintain federal program approval.

Small Business and Micro-Business Assessment

Adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules will have the same effect on a small business as on a large business. There are an estimated 4,715 gas stations that would be classified as small or micro-businesses according to the North American Industry Classification System table on the Comptroller's website. EPA estimated a small business cost of $658 per facility to implement the new testing and inspection requirements in the proposed rules. This would equate to an estimated total cost of $3,102,470 statewide for small or micro-businesses to implement the proposed rules. This cost estimate does not include disposal costs for waste or wastewater generated as a result of new testing requirements which could double the costs.

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 are necessary to comply with federal law and is, therefore, consistent with the health, safety, or environmental or economic welfare of the state and the agency need not consider other regulatory methods during the first five years that the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement Assessment for this proposed rulemaking. Any impacts to government growth are the result of changes to federal law and not the result of this rulemaking. The proposed rules do not create or eliminate a government program nor require the creation of new employee positions or the elimination of existing employee positions.

The proposed rules could result in an increase in future legislative appropriations to the agency and may require an increase in fees paid to the agency. Given the sheer number of USTs in Texas and its geographic size, along with population growth and an increasing universe of UST facilities, meeting the inspection requirement of the EPAct is challenging. At this time, it is understood that EPA is currently unable to provide any additional federal funds beyond the base UST grant to address Texas' unique circumstances with regard to the EPAct. If the agency does not receive similar levels of federal funding in future years, it is likely that the agency will not be able to meet the investigation requirements of the EPAct unless other sources of funding become available.

The provisions in HB 7 would require that the unexpended balance in the account be used to fund monitoring and cleanup of the remaining sites with releases reported to TCEQ on or before December 1998 and, therefore, decrease the fund balance of the PSTR Account by approximately $10.8 million each year. Fee rates may need to be adjusted in future years to ensure adequate funding to address additional new sites that may become a state obligation (because the owner/operator is either financially unable, cannot be found, or is unwilling).

The proposed rules do not create a new regulation. However, it does expand an existing regulation in that the proposed rules will add requirements for 30-day walkthrough inspections, three-year overfill prevention equipment testing, and annual release

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

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. Overall the new testing and inspection requirements are not expected to result in significant costs per facility or gas station according to EPA estimates.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of this rulemaking is to "protect the environment" by adding secondary containment requirements for new and replaced tanks and piping; operator training requirements; periodic operation and maintenance requirements for UST systems; requirements to ensure UST system compatibility before storing certain biofuel blends; removing past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems; and updating codes of practice. The second prong of the definition of a "major environmental rule" is not met. The proposed rules will 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. EPA performed an assessment of the potential costs, benefits, and other impacts associated with implementing the 2015 amendments to its UST program and concluded that the market impacts are likely to be diffuse and minimal. A link to EPA's Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Revisions to Underground Storage Tank Regulations can be found here: (https://www.epa.gov/sites/production/files/2015-07/documents/regs2015-ria.pdf). Based on Mr. Horvath's analysis and the EPA's assessment, the commission has concluded that the proposed rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, or jobs. Additionally, neither the environment nor the public health and safety of the state, or a sector of the state, will be adversely affected because the proposed rules are intended to enhance protections of the environment and public health and safety through the prevention of releases of regulated substances from underground PSTs. Although not required, the commission additionally reviewed the rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225. That section states: "(a) This section applies only to a major environmental rule adopted by a state 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." This proposed rulemaking does not meet any of the four applicability requirements and thus is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225. Specifically, the proposed amendments are intended to implement federal requirements, make the rules easier to read and understand, and improve program efficiency. First, the proposed rulemaking does not exceed any federal requirements because the program would allow Texas to continue to operate the UST program in lieu of federal regulation; therefore, the proposed rules are required to be consistent with federal law. Second, the proposed rulemaking does not exceed any state requirements because TWC, Chapter 26, establishes requirements for the commission's UST program and does not prohibit rules governing technical and operational requirements for UST systems or training requirements. Third, the proposed rule package does not exceed any delegation agreement or contract because there has been no delegation agreement or contract; in lieu of federal regulation, Texas operates a UST program, which is subject to the EPA's approval. Finally, the rulemaking is being proposed under TWC, §§26.011, 26.039, 26.341, 26.345, 26.347, 26.3475, 26.348, 26.351, and 26.3574 and not solely under the general powers of the agency. The proposed rulemaking is intended to satisfy the amended minimum requirements set for state UST programs promulgated by EPA, which will allow Texas to continue to operate a UST program in lieu of federal regulation. Accordingly, the commission has determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet any of the four requirements listed in Texas Government Code, §2001.0225(a).

Written comments on the Draft Regulatory Impact Analysis Determination of this rulemaking 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 analysis of whether these proposed rules 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 primary purpose of these proposed rules is to implement the 2015 amendments to the EPA's UST program. The proposed rules substantially advance this purpose by addressing such items as secondary containment requirements for new and replaced tanks and piping, operator training requirements, periodic operation and maintenance requirements for UST systems, UST system compatibility before storing certain biofuel blends, removal of past deferrals for emergency generator tanks, field constructed tanks, airport hydrant systems, and updated codes of practice, to mirror as closely as possible the 2015 amend-

ments to the EPA's UST program. The rulemaking is being proposed to incorporate minimum federal requirements for the purpose of submitting Texas's UST regulatory program for review and approval which will allow Texas to retain independent administration in lieu of federal regulation. Under 40 CFR §282.93, "Texas is approved to administer and enforce an underground storage tank program in lieu of the federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 USC, §§6991 *et seq."* Regarding enforcement authority, 40 CFR §282.93 states: "Texas has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 USC, §6991d and §6991e, as well as under other statutory and regulatory provisions." Regarding SPA 40 CFR §282.93 states: "To retain program approval, Texas must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 USC, §6991c, and 40 CFR part §281, subpart E."

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rulemaking because the rulemaking falls under the exclusion listed in Texas Government Code, §2007.003(b)(4): "an action . . . reasonably taken to fulfill an obligation mandated by federal law . . ." This rulemaking is an action reasonably taken to fulfill an obligation mandated by federal law because, as discussed previously, the rulemaking is being proposed to retain independent UST program approval by EPA.

Additionally, this proposed rulemaking falls under the exclusion listed in Texas Government Code, §2007.003(b)(13) because the rulemaking is an action in response to a real and substantial threat to public health and safety, is designed to significantly advance the health and safety purpose, and does not impose a greater burden than is necessary to achieve the health and safety purpose. This rulemaking is an "action taken in response to a real and substantial threat to public health and safety" in that contamination from releases from USTs pose a threat to both soils and groundwater with which the public may come into contact. The proposed rules are "designed to significantly advance the health and safety purpose" by requiring updated technical, operational, and training requirements, the intent of which is to reduce the likelihood of releases of contaminants to the environment. The proposed rules do not impose a greater burden than is necessary to achieve the health and safety purpose because the proposed rules mirror or track as closely as possible the requirements necessary for Texas to retain approval by EPA for an independent UST program.

Nevertheless, the commission performed a further assessment of whether these proposed rules constitute a taking as defined under Texas Government Code, §2007.002(5). The proposed rules implement rule changes to maintain state UST program approval. Promulgation and enforcement of the proposed rules will be neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's rights to property and reduce real property value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. There are no burdens imposed on private real property from these proposed rules and the benefits to society are the proposed rules' effect of technical, operational, and training requirements such that occurrences of releases of regulated substances into the environment are reduced. Therefore, the commission has determined that as a whole, this rulemaking will not constitute a taking as that term is defined under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program (CMP) and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

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 public hearing on this proposal in Austin on January 9, 2018, at 2:00 p.m. in Building E, Conference Room 201S (Agenda Room), 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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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.

Submittal of Comments

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-019-334-CE. The comment period closes on January 9, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Cynthia Gandee, Program Support Section, at (512) 239-7025.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §§334.2, 334.4, 334.6, 334.7, 334.10, 334.19

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding under-

ground and aboveground storage tanks; and TWC, §26.3574(b-1), which requires the commission to set the amount of the petroleum products delivery fee.

The United States Environmental Protection Agency (EPA) has amended the rules pertaining to underground storage tank technical requirements (40 Code of Federal Regulations (CFR) Part 280) and state program approval (40 CFR Part 281), effective October 13, 2015. TWC, §26.357, requires standards and rules concerning underground storage tanks adopted by the commission to be at least as stringent as federal requirements.

The proposed rules implement or track as closely as possible the amended federal rules. The proposed rules reflect the changed law of this state regarding petroleum products delivery fee made in House Bill (HB) 2694, 82nd Texas Legislature, 2011, in particular changes made to TWC, §26.3574, which have previously been implemented.

*§334.2. Definitions.*

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

(1) Abandonment in-place--A method of permanent removal of an underground storage tank from service where the tank is left in the ground after appropriate preparation and filling with an acceptable solid inert material in accordance with the requirements of §334.55 of this title (relating to Permanent Removal from Service).

(2) Abatement--The process of reducing in sufficient degree or intensity the source of the release or impacted area, and potential fire, explosion, or vapor hazards, such that immediate threats to human health no longer exist. This includes the removal, as necessary, of all regulated substances from any confirmed or suspected release source (including associated aboveground or underground tanks, individual tank compartments, or associated piping) and the removal of phase-separated regulated substances from the impacted area.

(3) Aboveground release--Any release to the surface of the land or to surface water, including, but not limited to, releases from the aboveground portion of an underground storage tank (UST) system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of a UST system.

(4) Aboveground storage tank (AST)--A non-vehicular device[,] (including any associated piping)[,] that is made of non-earthen materials; located on or above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as mineworking, basement, or vault; and designed to contain an accumulation of petroleum products.

[~~(5) ACT--A trademark of the former Association for Composite Tanks, now a licensed trademark of the Steel Tank Institute.~~]

(5) [~~(6)~~] Action level--The concentration of constituents of any substance or product listed in §334.1(a)(1) of this title (relating to Purpose and Applicability) in the soil or water at which corrective action will be required.

(6) Airport hydrant system--An underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, railcar, or other motor fuel carrier.

(7) Allowable cost--As defined by §334.308 of this title (relating to Allowable Costs and Restrictions on Allowable Costs).

(8) American National Standards Institute (ANSI)--A nationally recognized organization which provides certifications and standards for consumer products and services.

(9) American Petroleum Institute (API)--A nationally recognized organization which provides certifications and standards for petroleum equipment and services.

(10) [~~(8)~~] Ancillary equipment--Any devices that are used to distribute, meter, or control the flow of petroleum substances or hazardous substances into or out of an underground storage tank [~~(UST)~~], including, but not limited to, piping, fittings, flanges, valves, and pumps.

[~~(9) ANSI--American National Standards Institute, a nationally recognized organization which provides certifications and standards for consumer products and services.~~]

[~~(10) API--American Petroleum Institute, a nationally recognized organization which provides certifications and standards for petroleum equipment and services.~~]

(11) Appropriate regional office--The agency's regional field office which has jurisdiction for conducting authorized agency regulatory activities in the area where a particular underground storage tank system or aboveground storage tank system is located.

(12) Association for Composite Tanks (ACT)--A trademark of the former Association for Composite Tanks, now a licensed trademark of the Steel Tank Institute.

(13) [~~(12)~~] ASTM International (formerly known as American Society of Testing and Materials)--A [~~American Society of Testing and Materials,~~ a] nationally recognized organization which provides certifications and standards for products and services.

(14) [~~(13)~~] Backfill--The volume of materials or soils surrounding the underground storage tank bounded by the ground surface, walls, and floor of the tank pit.

(15) [~~(14)~~] Below-ground release--Any release to the subsurface of the land or to groundwater, including, but not limited to, releases from the below-ground portions of an underground storage tank (UST) system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of a UST system.

(16) [~~(15)~~] Beneath the surface of the ground--Beneath the ground surface or otherwise covered with material [~~materials so that visual inspection is precluded~~].

(17) [~~(16)~~] Cathodic protection--A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell, normally by means of either the attachment of galvanic anodes or the application of impressed current.

[~~(17) CERCLA--The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.~~]

(18) Change-in-service--A method of permanent removal from service involving the permanent conversion of a regulated underground storage tank to a tank which is not regulated under this chapter, where all regulated substances are properly removed by emptying and cleaning, and the tank is left in the ground for the storage of materials other than regulated substances.

(19) Closure letter--A letter issued by the agency which states that, based on the information available, the agency agrees that corrective action has been completed for the referenced release in accordance with agency requirements.

(20) Commingled--A combination or mixture of a petroleum product and a substance other than a petroleum product (excluding soil and/or water).

(21) Common carrier--With respect to delivery prohibitions, a person (as defined in this section) who physically delivers a regulated substance into an underground storage tank directly from a cargo tank which is affixed or mounted to a self-propelled, towable, or pushable vehicle (e.g., wagon, truck, trailer, railcar, aircraft, boat, or barge).

(22) Composite tank--A single-wall or double-wall steel tank, to which a fiberglass-reinforced plastic laminate or cladding has been factory-applied to the external surface of the outer tank wall.

(23) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)--The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(24) [~~(23)~~] Consumptive use--[~~(~~]With respect to heating oil[~~)~~], the utilization and consumption of heating oil on the premises where stored.

(25) Containment sump--A liquid tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

(26) [~~(24)~~] Corporate fiduciary [~~Fiduciary~~]--An entity chartered by the Texas Department of Banking [~~Banking Department of Texas~~], the Texas Department of Savings and Mortgage Lending [~~Savings and Loan Department of Texas~~], or the United States Office of the Comptroller of the Currency [~~comptroller of the currency, or the director of the United States Office of Thrift Supervision~~] that acts as a receiver, conservator, guardian, executor, administrator, trustee, or fiduciary of real or personal property.

(27) [~~(25)~~] Corrective action--Any assessment, monitoring, and remedial activities undertaken to investigate the extent of, and to remediate, contamination.

(28) [~~(26)~~] Corrective action plan (or remedial action plan)--A detailed plan developed to address site remediation of soil, groundwater, or surface water contamination that provides for required protection of human health, safety, and the environment. The selection of the most effective and efficient remedial method will be dictated by the nature and location of the release, the site soils, hydrogeological conditions, and the required degree of remediation. The remedial method selection should take into consideration such factors as cost, time, and state compliance requirements with each method. The title of any report which contains a corrective action plan must include the designation "remedial action plan."

(29) [~~(27)~~] Corrosion specialist--A person who, by reason of a thorough knowledge of the physical sciences and the principles [~~principals~~] of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a corrosion specialist or a cathodic protection specialist by NACE International; or

(B) licensed as a professional engineer by the Texas Board of Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(30) [~~(28)~~] Corrosion technician--A person who can demonstrate an understanding of the principles [~~principals~~] of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements related to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who is either:

(A) certified by NACE International as a corrosion technician, corrosion technologist, or senior corrosion technologist;

(B) employed under the direct supervision of a corrosion specialist (as defined in this section), where the corrosion specialist maintains responsible control and oversight over all corrosion testing and inspection activities; or

(C) certified as a cathodic protection tester, in a manner satisfactory to the agency, by either NACE International or the Steel Tank Institute [~~(STI)~~].

(31) [~~(29)~~] Date installation is complete--The date any regulated substance is initially placed in an underground storage tank or the date any petroleum product is initially placed in an aboveground storage tank.

(32) [~~(30)~~] Dielectric material--A material that does not conduct direct electrical current, as related to coatings, bushings, and other equipment and materials used with underground storage tank systems.

(33) Dispenser--Equipment located aboveground that dispenses regulated substances from the underground storage tank system.

(34) [~~(31)~~] Electrical equipment--Underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

(35) [~~(32)~~] Emergency generator--A standby electrical generating system powered by an internal combustion engine (including a turbine), where such system is designed to supply temporary electrical service only when service from the normal or primary electrical source is disrupted. Such systems include, but are not necessarily limited to, those providing emergency electrical service for hospitals, life support systems, and other medical service facilities; telephone and electrical utilities; heating, lighting, ventilation, security, elevator, fire control, and other essential building operations systems; uninterruptible power systems; essential air conditioning and refrigeration; and motors, machinery, and controls used for other essential or critical purposes.

(36) [~~(33)~~] Excavation zone--The space containing the underground storage tank (UST) system and backfill material, which is bounded by the ground surface and the walls and floor of the pit and trenches into which the UST system is placed at the time of installation.

(37) [~~(34)~~] Existing underground storage tank (UST) system--A UST system which is used or designed to contain an accumulation of regulated substances for which installation either had commenced prior to December 22, 1988, or had been completed on or prior to December 22, 1988. Installation will be considered to have commenced if the owner or operator had obtained all federal, state, and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either a continuous on-site physical construction or installation program had begun or the owner or operator had entered into contractual obligations (which could not

be canceled or modified without substantial loss) which required that the physical construction at the site or installation of the tank system was to be completed within a reasonable time.

(38) [~~(35)~~] External release detection--A method of release detection which includes equipment or procedures designed to effectively monitor or measure for the presence of regulated substances in the excavation zone, soil, or other media outside of a single-wall or double-wall underground storage tank system.

(39) [~~(36)~~] Facility--The site, tract, or other defined area where one or more underground storage tank systems or one or more aboveground storage tank systems are located.

(40) [~~(37)~~] Farm--A tract or tracts of land (including all associated structures and improvements) which are principally devoted to the raising of agricultural or other types of crops, domestic or other types of animals, or fish for the production of food, fiber, or other products or for other useful purposes, including fish hatcheries, rangeland, and plant nurseries with growing operations, but not including timber-growing land and operations dedicated primarily to recreational, aesthetic, or other non-agricultural activities (e.g., golf courses and parks).

(41) [~~(38)~~] Farm tank--A tank located on a farm where the stored regulated substance is or will be utilized directly in the farm activities.

(42) [~~(39)~~] Field-constructed tank--A tank constructed in the field. For example, a tank constructed of concrete that is poured in the field or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed [~~which is not factory-assembled, and which is principally constructed, fabricated, or assembled at the same facility where the tank is subsequently placed into service~~].

(43) [~~(40)~~] Flow-through process tank--A tank through which regulated substances flow in a steady, variable, recurring, or intermittent manner during, and as an integral part of, a production process (such as petroleum refining, chemical production, and industrial manufacturing), but specifically excluding any tank used for the static storage of regulated substances prior to their introduction into the production process and any tank used for the static storage of regulated substances which are products or by-products of the production process.

(44) [~~(41)~~] Free product ([~~or free-product~~] or non-aqueous phase liquid)--A regulated substance in its free-flowing non-aqueous liquid phase at standard conditions of temperature and pressure (i.e., that portion of the product not dissolved in water or adhering to soil).

(45) [~~(42)~~] Gathering lines--Any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operation.

(46) [~~(43)~~] Hazardous substance--Any substance defined or listed in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [~~(CERCLA)~~], §101(14) (42 United States Code (USC), §§9601, *et seq.),* and which is not regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC [~~United States Code~~], §§6921, *et seq.).*

(47) [~~(44)~~] Hazardous substance underground storage tank (UST) system--A UST system that contains an accumulation of either a hazardous substance, a mixture of two or more hazardous substances, or a mixture of one or more petroleum substances with one or more hazardous substances, and which does not meet the definition of a petroleum UST system in this section.

(48) [~~(45)~~] Heating oil--A petroleum substance which is typically used in the operation of heating, boiler, or furnace equipment and which either is one of the following seven technical grades of fuel oil: Number 1, Number 2, Number 4-light, Number 4-heavy, Number 5-light, Number 5-heavy, and Number 6; is a residual fuel oil derivative of the refining process (such as Navy Special and Bunker C residual fuel oils); or is another fuel (such as kerosene or diesel) used for heating purposes as a substitute for one of the fuel oils or residual fuel oil derivatives listed in this paragraph.

(49) [~~(46)~~] Hydraulic fluid--Any regulated substance that is normally used in a hydraulic lift system.

(50) [~~(47)~~] Hydraulic lift tank--A tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, or other similar devices.

(51) [~~(48)~~] Impressed current system--A method of cathodic protection where a rectifier is used to convert alternating current to direct current, where the current then flows in a controlled electrically connected circuit to non-sacrificial anodes, then through the surrounding soil or backfill to the protected metallic structure or component, and back to the rectifier.

(52) [~~(49)~~] In operation--The description of an in-service underground storage tank which is currently being used on a regular basis for its intended purpose.

(53) [~~(50)~~] In service--The status of an underground storage tank (UST) beginning at the time that regulated substances are first placed into the tank and continuing until the tank is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service. An in-service UST may or may not contain regulated substances, and may be either in operation or out of operation at any specific time.

(54) [~~(51)~~] Installer--A person who participates in or supervises the installation, repair, or removal of underground storage tanks.

(55) [~~(52)~~] Inventory control--Techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

(56) [~~(53)~~] Jacketed tank--A factory-constructed tank consisting of a single-wall or double-wall steel internal (or primary) tank that is completely enclosed in an external secondary-containment jacket made of noncorrodible material, and which is designed so that releases of stored substances from the internal tank can be contained and monitored within a liquid-tight interstitial space between the internal tank and the external jacket.

(57) [~~(54)~~] Lender--A state or national bank; a state or federal savings bank; a credit union; a state or federal savings and loan association; a state or federal government agency that customarily provides financing; or an entity that is registered with the Office of Consumer Credit Commissioner under Chapter 7, Title 79, Revised Statutes (Texas Civil Statutes, Article 5069-7.01, *et seq.)* if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

(58) [~~(55)~~] Liquid trap--A collection device (such as a sump, well cellar, and other trap) which is used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids, and which either may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(59) [~~(56)~~] Leaking petroleum storage tank (LPST) site--A site at which a confirmed release of a petroleum substance from an underground storage tank or aboveground storage tank has occurred. Pe-

troleum substance contamination which results from multiple sources may be deemed as one LPST site by the agency.

(60) [~~(57)~~] Maintenance--The normal and routine operational upkeep of underground storage tank systems necessary for the prevention of releases of stored regulated substances.

(61) [~~(58)~~] Monitoring well--An artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground. The term does not include any monitoring well which is used in conjunction with the production of oil, gas, or any other minerals.

(62) [~~(59)~~] Motor fuel--A complex blend of hydrocarbons [~~petroleum substance which is~~] typically used for the operation of a motor engine, such as [~~internal combustion engines (including stationary engines and engines used in motor vehicles, aircraft, and marine vessels),~~] and which is one of the following types of fuels: motor gasoline, aviation gasoline, Number 1 or Number 2 diesel fuel, or any blend containing one or more of these substances (for example, motor gasoline blended with alcohol). [~~Number 1 diesel fuel, Number 2 diesel fuel, biodiesel blended with Number 1 or Number 2 diesel, gasohol or other alcohol blended fuels.~~]

(63) [~~(60)~~] NACE International (NACE) (formerly National Association of Corrosion Engineers)--A [~~NACE International (formerly National Association of Corrosion Engineers),~~ a] nationally recognized organization which provides certifications and standards for corrosion protection services.

(64) National Fire Protection Association (NFPA)--A nationally recognized organization which provides certifications and standards for fire protection equipment and services.

(65) New dispenser--A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at an underground storage tank facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

(66) [~~(61)~~] New underground storage tank (UST) system--A UST system which is used or designed to contain an accumulation of regulated substances for which installation commenced after December 22, 1988, [~~;~~] or an underground storage system which is converted from the storage of materials other than regulated substances to the storage of regulated substances after December 22, 1988.

~~[(62) NFPA--National Fire Protection Association, a nationally recognized organization which provides certifications and standards for fire protection equipment and services.]~~

(67) [~~(63)~~] Non-aqueous phase liquid (NAPL)--See "Free product (or non-aqueous phase liquid)" as defined in this section.

(68) [~~(64)~~] Non-commercial purposes--[~~(~~]With respect to motor fuel,[~~)~~] all purposes except resale.

(69) [~~(65)~~] Noncorrodible material--A material used in the construction, maintenance, or upgrading of any component of an underground storage tank (UST) system which is designed to retain its physical and chemical properties without significant deterioration or failure for the operational life of the UST system when placed in contact with (and subjected to the resulting electrical and chemical forces associated with) any surrounding soil, backfill, or groundwater, any connected components constructed of dissimilar material, or the stored regulated substance.

(70) [~~(66)~~] Observation well--A monitoring well or other vertical tubular structure which is constructed, installed, or placed within any portion of an underground storage tank excavation zone (including the tank hole and piping trench), and which is designed or used for the observation or monitoring of groundwater, or for the observation, monitoring, recovery, or withdrawal of either released regulated substances (in liquid or vapor phase) or groundwater contaminated by such released regulated substances.

(71) [~~(67)~~] Occurrence--An incident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank or aboveground storage tank or tank system.

(72) [~~(68)~~] On the premises where stored--[~~(~~]With respect to heating oil, [~~)~~] refers to underground storage tank systems located [~~the consumptive use of heating oil~~] on the same property [~~or site~~] where the stored heating oil is used [~~stored~~].

(73) [~~(69)~~] Operational life--The actual or anticipated service life of an underground storage tank system, which begins when regulated substances are first placed into the tank system and which continues until the tank system is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service.

(74) [~~(70)~~] Operator--Any person in day-to-day control of, and having responsibility for, the daily operation of the underground storage tank system or the aboveground storage tank system, as applicable.

(75) [~~(71)~~] Out of operation--The description of an in-service underground storage tank which is not currently being used on a regular basis for its intended purpose.

(76) [~~(72)~~] Overfill--A release that occurs when an underground storage tank system is filled beyond its capacity, thereby resulting in a discharge of a regulated substance to the surface or subsurface environment.

(77) [~~(73)~~] Owner--Any person who holds legal possession or ownership of an interest in an underground storage tank (UST) system or an aboveground storage tank (AST). For the purposes of this chapter, if the actual ownership of a UST system or an AST is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system or the AST is located is considered the UST system or AST owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the UST system or AST is owned by another person. A person who has registered as an owner of a UST system or AST with the commission under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) (or a preceding rule section concerning tank registration) after September 1, 1987, shall be considered the UST system owner and/or AST owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the UST system or AST was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Texas Water Code (TWC), §26.3514, Limits on Liability of Lender; TWC, §26.3515, Limits on Liability of Corporate Fiduciary; and TWC, §26.3516 [~~§25.3516~~], Limits on Liability of Taxing Unit.

~~[(74) PEI--Petroleum Equipment Institute, a nationally recognized organization which provides certifications and standards for petroleum equipment and services.]~~

(78) [~~(75)~~] Permanent removal from service--The termination of the use and the operational life of an underground storage tank

by means of either removal from the ground, abandonment in-place, or change-in-service.

(79) [~~(76)~~] Person--As defined in §3.2 of this title (relating to Definitions). [~~An individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.~~]

(80) Petroleum Equipment Institute (PEI)--A nationally recognized organization which provides certifications and standards for petroleum equipment and services.

(81) [~~(77)~~] Petroleum marketing facilities--All facilities at which a petroleum substance is produced or refined and all facilities from which a petroleum substance is sold or transferred to other petroleum substance marketers or to the public.

(82) [~~(78)~~] Petroleum marketing firms--All firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(83) [~~(79)~~] Petroleum product--A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including, but not limited to, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, Number 1 and Number 2 diesel, and biodiesel blended with Number 1 or Number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(84) [~~(80)~~] Petroleum storage tank--

(A) Any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) Any one or combination of underground storage tanks and all connecting underground pipes that contain petroleum products and that are regulated by the commission.

(85) [~~(81)~~] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is liquid at standard conditions of temperature and pressure (except for any substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code, §§6921, *et seq.)).* For the purposes of this chapter, a petroleum substance is limited to one or a combination of the substances or mixtures in the following list:

(A) basic petroleum substances[--] (crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions);

(B) motor fuels[--] (see definition for "Motor fuel" in this section);

(C) aviation gasolines[--] (e.g., Grade 80, Grade 100, and Grade 100-LL);

(D) aviation jet fuels[--] (e.g., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8);

(E) distillate fuel oils[--] (e.g., Number 1-D, Number 1, Number 2-D, and Number 2);

(F) residual fuel oils[--] (e.g., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6);

(G) gas-turbine fuel oils[--] (e.g., Grade 0[~~O~~]-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT);

(H) illuminating oils[--] (e.g., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil);

(I) solvents[--] (e.g., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane);

(J) lubricants[--] (automotive and industrial lubricants);

(K) building materials[--] (e.g., liquid asphalt and dust-laying oils);

(L) insulating and waterproofing materials[--] (e.g., transformer oils and cable oils); or

(M) used oils[--] (see definition for "Used oil" in this section).

(86) [~~(82)~~] Petroleum underground storage tank (UST) system--A UST system that contains, has contained, or will contain a petroleum substance (as defined in this section), a mixture of two or more petroleum substances, or a mixture of one or more petroleum substances with very small amounts of one or more hazardous substances. In order for a UST system containing a mixture of petroleum substances with small amounts of hazardous substances to be classified as a petroleum UST system, the hazardous substance must be at such a dilute concentration that the overall release detectability, effectiveness of corrective action, and toxicity of the basic petroleum substance is not altered to any significant degree.

(87) [~~(83)~~] Pipeline facilities (including gathering lines)--New and existing pipeline rights-of-way, including any equipment, facilities, or buildings therein which are used in the transportation or associated treatment (during transportation) of gas or hazardous liquids (which include petroleum and other liquids as designated by the Secretary of the United States Department of Transportation), and which are regulated under the federal Natural Gas Pipeline Safety Act of 1968 (49 United States Code (USC) App. 1671, *et seq.);* the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 USC [~~United States Code~~] App. 2001, *et seq.);* or (for intrastate pipeline facilities) the Texas Natural Resources Code, Chapter [~~Chapters~~] 111 or 117, or Texas Civil Statutes, Articles 6053-1 and 6053-2.

(88) [~~(84)~~] Piping--All underground pipes in an underground storage tank system, including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system through which regulated substances flow or in which regulated substances are contained or stored.

(89) [~~(85)~~] Piping trench--The portion of the excavation zone at an underground storage tank facility which contains the piping system and associated backfill materials.

(90) [~~(86)~~] Pressurized piping--Product or delivery piping in an underground storage tank system which typically operates at greater than atmospheric pressure.

(91) [~~(87)~~] Professional engineer--A person who is currently duly licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(92) [~~(88)~~] Professional geoscientist--A person who is currently duly licensed by the Texas Board of Professional Geoscientists to engage in the public practice of geoscience in the State of Texas.

(93) [~~(89)~~] Qualified personnel--Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any

required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally accepted industry standards for such activity.

(94) [~~(90)~~] Radioactive materials--Radioactive substances or radioactive waste materials (e.g., high-level radioactive wastes and low-level radioactive cooling waters) which are classified as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [~~(CERCLA)~~], §101(14), 42 United States Code (USC), §§9601, *et seq.);* except for radioactive materials regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C, 42 USC [~~United States Code~~], §§6921, *et seq.);*

(95) [~~(91)~~] Regulated substance--An element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. For the purposes of this chapter, a regulated substance is limited to any hazardous substance (as defined in this section), any petroleum substance (as defined in this section), any mixture of two or more hazardous substances and/or petroleum substances, and any other substance designated by the commission to be regulated under the provisions of this chapter.

(96) [~~(92)~~] Release--Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or aboveground storage tank into groundwater, surface water, or subsurface soils. In this definition, the term "subsurface soils" does not include backfill or native material in the tank hole that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless petroleum free product is present in the backfill or native material.

(97) [~~(93)~~] Release detection--The process of determining whether a release of a regulated substance is occurring, or has occurred, from an underground storage tank system.

(98) [~~(94)~~] Repair--The restoration, renovation, or mending of a damaged or malfunctioning tank or underground storage tank system component.

(99) Replaced--

(A) For a tank - to remove a tank and install another tank.

(B) For piping - to remove 35% or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(100) [~~(95)~~] Residential tank--A tank located on property used primarily for dwelling purposes.

(101) [~~(96)~~] Retail service station--A facility where flammable liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and where such dispensing is an act of retail sale.

(102) [~~(97)~~] Risk-based corrective action--Site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground storage tank or aboveground storage tank.

(103) [~~(98)~~] Secondary containment--A containment method by which a secondary wall, jacket, or barrier is installed around the primary storage vessel (e.g., tank or piping) in a manner designed to prevent a release from migrating beyond the secondary wall or barrier before the release can be detected. Secondary containment systems include, but are not limited to: double-wall tank and/or piping systems, impervious liners, jackets, containment boots, sumps, or vaults surrounding a primary (single-wall) tank and/or piping system.

(104) [~~(99)~~] Septic tank--As defined in §285.2 of this title (relating to Definitions) [~~A water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer~~].

(105) [~~(100)~~] Spill--A release of a regulated substance which results during the filling, placement, or transfer of regulated substances into an underground storage tank (UST) or an aboveground storage tank (AST), or during the transfer or removal of regulated substances from a UST system or an AST.

(106) [~~(101)~~] Standard conditions of temperature and pressure--A temperature of 60 degrees Fahrenheit and an atmospheric pressure of 14.7 pounds per square inch absolute.

(107) [~~(102)~~] Steel Tank Institute (STI)--A [~~STI--Steel Tank Institute, a~~] nationally recognized organization which provides certifications and standards for steel tanks.

(108) [~~(103)~~] Stormwater or wastewater collection system--The piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance [~~to and from retention areas and into natural or man-made drainage channels~~].

(109) [~~(104)~~] Suction piping--Product or delivery piping in an underground storage tank system which typically operates below atmospheric pressure.

(110) [~~(105)~~] Sump--Any man-made pit or reservoir that meets the definition of a tank in this section (including any connected troughs or trenches) that serves to collect and temporarily store regulated substances.

(111) [~~(106)~~] Surface impoundment--A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (but possibly lined with man-made materials) that is designed to hold an accumulation of regulated substances.

(112) [~~(107)~~] Tank--A stationary device (generally exclusive of any associated ancillary equipment) designed or used to contain an accumulation of regulated substances which is constructed of a non-earthen material (e.g., concrete, steel, or plastic) that provides structural support.

(113) [~~(108)~~] Tank hole--The portion of the excavation zone at an underground storage tank facility which contains the tanks and associated backfill materials.

(114) [~~(109)~~] Tank system--An underground storage tank system.

(115) [~~(110)~~] Temporary removal from service--The procedure by which an underground storage tank system may be temporarily taken out of operation without being permanently removed from service.

(116) [~~(111)~~] Tightness test (or tightness testing)--A procedure for testing and analyzing a tank or piping system to determine

whether the system(s) is capable of preventing the inadvertent release of a stored substance into the environment.

(117) Under-dispenser containment (UDC)--Containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

[~~(112) UL--Underwriters Laboratories, Inc., a nationally recognized organization which provides certifications and standards for consumer products and services.~~]

(118) [~~(113)~~] Underground area--An underground room, basement, cellar, shaft, or vault, which provides enough space for physical inspection of the exterior of a tank or tank system situated on or above the surface of the floor.

(119) [~~(114)~~] Underground storage tank (UST)--Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground or otherwise covered with material so that visual inspection is precluded.

(120) [~~(115)~~] Underground storage tank (UST) system--An underground storage tank, all associated underground piping and underground ancillary equipment, spill and overfill prevention equipment, release detection equipment, corrosion protection system, secondary containment equipment (as applicable), and all other related systems and equipment.

(121) Underwriters Laboratories, Inc. (UL)--A nationally recognized organization which provides certifications and standards for consumer products and services.

(122) [~~(116)~~] Unsaturated zone--The subsurface zone containing water under pressure less than that of the atmosphere (including water held by capillary forces within the soil) and containing air or gases generally under atmospheric pressure. This zone is bounded at the top by the ground surface and at the bottom by the upper surface of the zone of saturation (i.e., the water table).

(123) [~~(117)~~] Upgrading--The addition, improvement, retrofitting, or renovation of an existing underground storage tank system with equipment or components as required to meet the corrosion protection, spill and overfill prevention, and release detection requirements of this chapter.

(124) [~~(118)~~] Used oil--Any oil [~~or similar petroleum substance~~] that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities [~~used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g., car and truck engine oil, transmission fluid, and brake fluid), spent industrial oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils~~].

[~~(119) UST--An underground storage tank (as defined in this section).~~]

[~~(120) UST system--An underground storage tank system (as defined in this section).~~]

(125) [~~(121)~~] Vent lines--All pipes including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system, which are intended to convey the vapors emitted from a regulated substance stored in an underground storage tank to the atmosphere.

[~~(122) Wastewater collection system--The piping, pumps, conduits, and any other equipment necessary to collect and transport domestic, commercial, or industrial wastewater to and from any facilities or areas where treatment of such wastewater is designated to occur.~~]

(126) [~~(123)~~] Wastewater treatment tank--A tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

*§334.4. Exclusions for Underground Storage Tanks (USTs) and UST Systems.*

(a) Complete exclusions. In addition to the tanks exempted from regulation under §334.3 of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems), the following USTs are completely excluded from regulation under this chapter:

(1) any UST system containing a hazardous listed waste or identified under the federal Solid Waste Disposal Act, Subtitle C[~~,~~] (42 United States Code (USC), §6921, *et seq.),* or containing a mixture of such hazardous waste and other regulated substances, where such system is already subject to regulation under the federal Solid Waste Disposal Act, Subtitle C;

(2) any wastewater treatment tank (including an oil-water separator and any pretreatment facility), which is an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, either §307(b) or §402 [~~or §307(b),~~] (33 USC, [~~United States Code~~] §1251, *et seq.);* or

(B) permitted pursuant to the Texas Water Code (TWC), Chapter 26;

(3) sumps which have a capacity of less than 110 gallons;

(4) emergency spill protection or emergency overflow containment tanks, including certain sumps and secondary containment systems, which are used solely for the temporary storage or containment of regulated substances resulting from a leak, spill, overfill, or other unplanned release, and where the regulated substances are routinely removed within 48 hours of the discovery of the release; provided that such tanks must be inspected for a release no less than once every month; or

(5) UST systems which during their entire operational life have exclusively contained only regulated substances at such dilute concentrations that any release would not pose any significant threat to human health and safety or the environment.

(b) Partial exclusions. The following USTs are subject to all provisions of this chapter, except for Subchapter C of this chapter (relating to Technical Standards); Subchapter N of this chapter (relating to Operator Training); Chapter 30, Subchapter I of this title (relating to Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration);[~~,~~] Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems);[~~,~~] and the certification requirements of §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems):

(1) any wastewater treatment tank (including oil-water separators), where such tank is not an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, either §307(b) or §402 [~~or §307(b),~~] (33 USC, [~~United States Code~~] §1151, *et seq.);* or

(B) permitted pursuant to the TWC [~~Texas Water Code~~], Chapter 26;

(2) any UST system that contains radioactive substances, where such system is regulated by the federal Nuclear Regulatory Commission (or its successor) under the provisions of the Atomic Energy Act of 1954 (42 USC, [~~United States Code~~] §2011, *et seq.);*

(3) any UST system that contains fuel used solely to power an emergency electrical generator system at a nuclear power generation system facility regulated by the federal Nuclear Regulatory [~~Regulation~~] Commission (or its successor) under the provisions of the Title 10 Code of Federal Regulations, Part 50, Appendix A.

(c) Other exclusion. In addition to the partial exemption for hydraulic lifts covered under §334.3(b) of this title, all other in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold 100 gallons or more of hydraulic oil are similarly excluded from regulation under this chapter, except that such lifts remain subject to the release reporting and corrective action requirements under Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(d) Upon request by the agency, the owner and operator of a tank claimed to be excluded under this section must provide appropriate documentation or other information in a timely manner to support that claim.

*§334.6. Construction Notification for Underground Storage Tanks (USTs) and UST Systems.*

(a) General requirements.

(1) Beginning September 1, 1987, any person who intends either to install a new or replacement underground storage tank (UST), to remove an UST from the ground, or to conduct a permanent abandonment in-place of an UST must comply with the notification requirements of this section prior to initiating such activity.

(2) On or after September 29, 1989, any person who intends to perform any construction activity listed in subsection (b)(1) of this section must comply with the notification requirements of this section prior to initiating such activity.

(3) In addition to the construction notification requirements of this section, the owner or operator of an existing or proposed UST system that is located or will be located on [~~in~~] the designated recharge [~~zone~~] or transition zones or contributing zone within the transition zone of the Edwards Aquifer must also secure the requisite approval from the agency prior to conducting certain regulated UST activities, as prescribed under Chapter 213 of this title (relating to Edwards Aquifer).

(4) Any UST construction activity performed or completed pursuant to a notification submitted under the provisions of this section must meet the applicable technical standards and procedural requirements under Subchapter C of this chapter (relating to Technical Standards).

(5) In situations where a proposed UST construction activity is necessitated by a suspected or confirmed release of regulated substances, or where the activity contributes to or causes such a release, the owner or operator must comply with the release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(6) Construction notifications required under this section may be provided to the agency's central office in Austin or to the agency's appropriate regional office in the area of the activity, unless otherwise specified in this section. The official date of notification must be the date on which the notification is first received in an agency office.

(7) Construction notification required under this section must be provided by the owner or operator, or an authorized agent or representative of the owner or operator (e.g., a contractor or consultant who has contracted for such construction activity). Construction notifications filed by unauthorized persons are null and void.

(b) Notification for major construction activities.

(1) Applicable activities.

(A) For the purposes of this section, a major UST construction activity includes any of the following:

*(i)* installation of new or previously used tank systems at a new facility, and the addition or replacement of tanks at an existing facility;

*(ii)* removal of existing tank systems from the ground (either temporarily or permanently);

*(iii)* permanent abandonment in-place or change-in-service of existing tank systems;

*(iv)* tank repairs, including interior and exterior relining or recoating;

*(v)* installation of new or replacement piping for existing tanks;

*(vi)* addition of secondary containment equipment for new or existing tank or piping systems;

*(vii)* any tank integrity assessment or other activities requiring the entrance of any persons into a tank; [~~and~~]

*(viii)* addition or replacement of any of the following items at existing facilities, when such addition or replacement is necessary for compliance with the minimum upgrading requirements in §334.47(b) of this title (relating to Technical Standards for Existing Underground Storage Tank [~~UST~~] Systems):

*(I)* cathodic protection systems;

*(II)* release detection systems;

*(III)* spill and overfill prevention equipment; or

*(IV)* monitoring well; and[~~.~~]

*(ix)* switching to a regulated substance containing greater than 10% ethanol or greater than 20% biodiesel.

(B) The requirements of this section are not applicable to routine and minor maintenance activities related to the tank and piping systems, such as tightening loose fittings and joints, adjusting and calibrating equipment, conducting routine inspections and tests, and the substitution or in-kind replacement of any obsolete or malfunctioning UST system component for any purpose other than required upgrading.

(C) When a [~~an~~] UST system has been taken temporarily out-of-service under §334.54 of this title (relating to Temporary Removal from Service), the owner or operator must first submit a construction notification form before returning the UST system to service.

(2) Filing requirements. Except as provided under subsection (c) of this section, any owner or operator who intends to perform a major UST construction activity as described in paragraph (1) of this subsection must file a written notification with the agency at least 30 days prior to initiating the activity.

(A) Such notification should be submitted on the agency's authorized form, as described in paragraph (6) of this subsection.

(B) When requested by the agency, any person who intends to perform a major UST construction activity must also submit

additional supporting information to assure that the construction activity is in compliance with the requirements of this chapter. Supporting information which may be requested by the agency includes, but is not limited to, the following items:

*(i)* detailed design plans and specifications (drawn to scale);

*(ii)* installation standards and operating instructions for major system components;

*(iii)* quality assurance plans;

*(iv)* compatibility data related to the stored substances and the materials of construction;

*(v)* specific geological, hydrological, and environmental site information;

*(vi)* qualifications and experience records of consultants, equipment installers, and contractors;

*(vii)* formal plan or procedures for tank removals, changes-in-service, and abandonments in-place;

*(viii)* disposal procedures for removed tanks;

*(ix)* general contingency plan for release abatement and the clean-up and disposal of any residual regulated substances, contaminated soils, or contaminated water (including wash water, groundwater, or surface water); and

*(x)* basis and description for any proposed change-in-service.

(C) Between 24 and 72 hours prior to the scheduled time of initiation of the proposed activity, the owner or operator must contact the agency's appropriate regional office in the area of the activity to confirm the time of the initiation of the proposed activity. Any revisions to the proposed construction start date must be in accordance with paragraph (3) of this subsection. This subparagraph does not apply to paragraph (1)(A)(ix) of this subsection.

(3) Rescheduling. If after the submittal of the initial construction notification, the owner or operator determines that a revision to the previously reported scope or start date for the construction is necessary, the owner or operator must immediately report the revised construction information to the commission's appropriate regional office in the area of the activity. This paragraph does not apply to paragraph (1)(A)(ix) of this subsection.

(A) If an earlier start date is proposed, and if this date is less than 30 days from the original notification date, then the owner or operator must comply with the requirements of paragraph (4) of this subsection.

(B) An owner or operator may revise the proposed construction start to a later date as necessary, provided that the agency's appropriate regional office is notified, and provided that original written notifications are properly renewed upon expiration in accordance with paragraph (5) of this subsection.

(4) Waiver requests. Normally a notification period of at least 30 days is required prior to the initiation of any major UST construction activity. However, if after the submittal of the construction notification, the owner or operator has good cause for an accelerated construction schedule, then the owner or operator may request approval of an earlier construction start date. Such request must be made directly to the agency's appropriate regional office in the area of the activity. The regional director (or the director's designated representative) has the authority to approve or deny such requests, and such decision will be based on the following criteria:

(A) good cause shown by the owner or operator for an earlier construction start date; and

(B) the ability of agency personnel to arrange and schedule an adequate inspection of the activity.

(5) Expiration. A written construction notification for a major UST construction activity is valid for only 180 days after the original notification date or 150 days after the originally anticipated construction start date, whichever is earlier. If the proposed construction has not commenced within this period, the original notification will expire. If the owner or operator still plans to perform the construction after the expiration of this period, a new and updated construction notification form must be filed.

(6) Notification form.

(A) Any person who intends to perform a major UST construction activity (as described in paragraph (1) of this subsection) must provide all the applicable construction notification information indicated on the agency's authorized construction notification form.

(B) The construction notification form must be filled out completely and accurately. Upon completion, the form must be dated and signed by the owner, the operator, or the authorized representative of the owner or operator, and must be timely filed in accordance with subsection (a)(6) [~~(a)(5)~~] of this section.

(c) Alternative notification procedures.

(1) Only for UST construction activities involving situations described under paragraph (2) of this subsection, the owner or operator may comply with the following alternative notification and reporting procedures in lieu of the normal notification requirements of subsection (b) of this section.

(A) The owner or operator must provide verbal or written notification to the agency as soon as possible prior to initiating the construction activity. Such notification must be submitted directly to the agency's appropriate regional office in the area of the activity.

(B) After providing the construction notification prescribed under subparagraph (A) of this paragraph, the owner or operator may proceed with the construction activity, as directed by the regional director (or the regional director's designated representative). The owner or operator must maintain detailed records of the construction. No later than 30 days after completion of the construction, the owner or operator must submit to the agency a detailed report describing the activity. If the agency determines that the information in such report is insufficient to assure compliance with the applicable requirements of this chapter, then the owner or operator may be required to submit additional information to demonstrate such compliance.

(2) The alternative notification procedures of paragraph (1) of this subsection may be used only when the following situations occur:

(A) when an owner or operator of an UST can demonstrate that a release or suspected release of a regulated substance has occurred or is likely to occur as a result of the operation of the UST, when such release is considered an immediate threat to human health or safety or the environment, and when the owner or operator can demonstrate that the expeditious initiation and completion of the proposed construction activity is necessary to prevent or abate such release;

(B) when an out-of-operation UST system is discovered during unrelated construction activities (e.g., the construction of building excavations, streets, highways, utilities, etc.), when the property owner can reasonably demonstrate no prior knowledge of the existence of the tank, when the expeditious removal or abandonment in-place of

the tank is considered necessary or advisable for the completion of the unrelated construction activity, and where any delays in completion of the tank removal or abandonment in-place would cause unreasonable financial hardship due to contract schedules and completion times;

(C) when any duly authorized public official (e.g., any federal, state, or local fire or safety officer, health or environmental official, law officer, etc.) orders the immediate removal or repair of all or portions of a [~~an~~] UST system which poses an immediate threat to human health, safety, or the environment;

(D) when the activity is necessary to maintain the operational readiness of an emergency generator, as defined by §334.2 of this title (relating to Definitions);

(E) in any other case where the agency determines that compliance with the notification provisions of subsection (b) of this section would be unreasonable or impractical, or could increase the threat to human health or safety or the environment.

*§334.7. Registration for Underground Storage Tanks (USTs) and UST Systems.*

(a) General provisions.

(1) All underground storage tanks (USTs) in existence on or after September 1, 1987, must be registered with the agency on authorized agency forms in accordance with subsection (e) of this section, except for those tanks which:

(A) are completely exempted or partially exempted from regulation under §334.3(a) or (b) of this title (relating to Exemptions for Underground Storage Tanks (USTs) and UST Systems);

(B) are completely excluded or partially excluded from regulation under §334.4(a) or (c) of this title (relating to Exclusions for Underground Storage Tanks (USTs) and UST Systems);

(C) were properly registered with the agency prior to September 29, 1989, [~~the effective date of this subchapter~~] under the provisions of the federal Solid Waste Disposal Act, §9002 (42 United States Code, §§6921, *et seq.),* provided that the owner or operator must submit notice of all changes and additional information in accordance with the provisions of subsection (d) of this section;

(D) have been permanently removed from usage by either:

*(i)* were permanently removed from the ground before May 8, 1986; or

*(ii)* remain in the ground, but were emptied, cleaned, and filled with solid inert materials on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation; or

(E) were out of operation and empty of regulated substances at the time of their discovery, provided that:

*(i)* the facility owner and operator can reasonably demonstrate no prior knowledge of the existence of the USTs; and

*(ii)* the USTs are permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than September 29, 1990, or within 60 days of their discovery, whichever is later.

(2) The owner and operator of a UST are responsible for compliance with the tank registration requirements of this section. An owner or operator may designate an authorized representative to complete and submit the required registration information. However, the owner and operator remain responsible for compliance with the provisions of this section by such representatives.

(3) All USTs subject to the registration requirements of this section are also subject to the fee provisions of Subchapter B of this chapter (relating to Underground Storage Tank Fees), except where specifically exempted in this chapter. The failure by a tank owner or operator to properly or timely register any tanks does not exempt the owner from such fee assessment and payment provisions.

(4) Proper completion of the tank registration portions of the UST registration and self-certification form will result in the agency's issuance of a UST registration certificate for the tanks at the facility covered by that registration. This certificate is tied to the delivery prohibitions detailed in §334.5(b)(2) of this title (relating to General Prohibitions for Underground Storage Tanks (USTs) and UST Systems).

(b) Existing tanks. Any person who owns a UST that was in existence on September 1, 1987, must register such tank with the agency not later than September 1, 1987, on an authorized agency form, except for those tanks exempted and excluded under subsection (a)(1)(A) - (D) of this section. Upon November 23, 2000 [~~the effective date of this subsection~~], the obligation becomes joint and several with the tank operator as well.

(c) New or replacement tanks. Any person who owns a new or replacement UST that is placed into service on or after September 1, 1987, must register the tank with the agency on an authorized agency form within 30 days after the date any regulated substance is placed into the tank, except for those tanks exempted or excluded under subsection (a)(1)(A) - (D) of this section. Upon November 23, 2000 [~~the effective date of this subsection~~], the obligation becomes joint and several with the tank operator as well.

(d) Changes or additional information.

(1) The owner or operator of a UST system must provide written notice to the agency of any changes or additional information concerning such system. Types of changes or additional information subject to this requirement must include, but are not limited to, the following:

(A) change in owner or operator, or change in owner or operator information (e.g., authorized representative, mailing address, and/or telephone number), provided that:

*(i)* amended registrations of owner or operator information (other than ownership transfers) may be submitted by the owner, operator, or an authorized representative of the owner or operator; and

*(ii)* amended registrations reflecting UST ownership transfers must be provided by the new UST owner or a legally-authorized representative of the new UST owner (i.e., registrations of ownership transfers submitted by others will be returned and will not be recorded);

(B) change in the operational status of any tank system (e.g., in service, temporarily out-of-service, removed from the ground, permanently abandoned in-place, change-in-service to provide for the storage of a substance other than a regulated substance, or change to exempt or excluded status);

(C) change in the type of stored regulated substance, including switching to a regulated substance containing:[~~;~~]

*(i)* greater than 10% ethanol; or

*(ii)* greater than 20% biodiesel;

(D) installation of additional tanks and/or ancillary equipment at an existing facility;

(E) change in the type of piping for an existing tank;

(F) the addition of, or a change in the type of, internal or external corrosion protection for the tanks, piping, and/or ancillary equipment;

(G) the addition of, or a change in the type of, spill and overfill prevention equipment for the tanks;

(H) the addition of, or a change in the type of, release detection equipment or methods for the tanks and/or piping;

(I) change in the location of documents and records for the facility; and

(J) change in financial assurance information related to the facility as specified in Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems).

(2) Notice of any change or additional information must be submitted on an authorized agency form which has been completed in accordance with subsection (e) of this section. The agency's UST facility number for the facility must be included in the appropriate space on the form.

(3) Notice of any change or additional information must be filed with the agency within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(4) However, for the initial filing of the UST registration and self-certification form (which is described in §334.8(c)(4) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems)) for all regulated UST systems at a facility, all UST owners and operators must complete the "Tank Identification/Description" section of the UST registration portion of the form by the same deadline given in §334.8(c)(4)(A)(vi) of this title. This requirement does not relieve an owner or operator from any other registration requirements under this section.

(e) Required form for providing UST registration information.

(1) Any UST owner or operator required to submit UST registration information under subsections (a) - (d) of this section must provide all the information indicated on the agency's authorized form for each regulated UST. The UST registration information must be provided on the appropriate agency form, as specified in paragraph (6) of this subsection.

(2) The UST registration portion of the form must be filled out completely and accurately. Upon completion, the form must be dated and signed by the owner, or the operator, or an authorized representative of the owner or operator, and must be filed with the agency within the specified time frames.

(3) All UST owners or operators required to submit UST registration information under subsections (a) - (d) of this section must provide the registration information for all USTs located at a particular facility on the same form.

(4) UST owners or operators who own or operate USTs located at more than one facility must complete and file a separate form for each facility where regulated USTs are located.

(5) If additional information, drawings, or other documents are submitted with new or revised registration data, specific facility identification information (including the facility identification number, if known) must be conspicuously indicated on each document and all such documents must be attached to and filed with the form.

(6) For any UST registration information filed with the agency on or after November 23, 2000 [~~the effective date of this paragraph~~], UST owners and operators must provide the required information on an authorized agency UST registration and self-certification form, as prescribed by §334.8(c)(4) [~~§334.8(c)(3)~~] of this title.

(7) Owners and operators of petroleum UST systems should also see the financial assurance requirements in §37.870(b) of this title (relating to Reporting, Registration, and Certification).

(f) Inadequate information. When any of the required UST registration information submitted to the agency is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the agency may require the owner and/or operator to submit additional information. An owner or operator must submit any such required additional information within 30 days of receipt of such request.

*§334.10. Reporting and Recordkeeping.*

(a) Reporting. Owners and operators of underground storage tank (UST) systems must assure that all reporting and filing requirements in this chapter are met, including the following (as applicable):

(1) construction notification, in accordance with §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems);

(2) application for approval of any proposed UST system on the regulated zones of [~~in~~] the Edwards Aquifer [~~recharge or transition zones~~], in accordance with §334.6(a)(3) [~~§334.6(a)(2)~~] of this title and Chapter 213 of this title (relating to Edwards Aquifer);

(3) registration of UST systems and changes in information, in accordance with §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems);

(4) certification of construction activities, financial assurance, and compliance self-certification in accordance with §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems);

(5) request for approval of any variance or alternative procedure, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(6) documentation of release determination or site assessment conducted when a UST system is permanently removed from service, in accordance with §334.55(a)(6) of this title (relating to Permanent Removal from Service);

(7) payment of UST fees, in accordance with Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(8) reports, plans, and certifications related to suspected and confirmed releases of regulated substances, including:

(A) release reports and notifications, in accordance with §334.72 of this title (relating to Reporting of Suspected Releases), §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills), and §334.76 of this title (relating to Initial Response to Releases);

(B) report and certification of site check methods, in accordance with §334.74(3) [~~§334.74(c)~~] of this title (relating to Release Investigation and Confirmation Steps);

(C) initial abatement report, in accordance with §334.77(b) of this title (relating to Initial Abatement Measures and Site Check);

(D) initial site assessment report, in accordance with §334.78(c) [~~§334.78(b)~~] of this title (relating to Site Assessment);

(E) non-aqueous phase liquid removal report, in accordance with §334.79(4) [~~§334.79(d)~~] of this title (relating to Removal of Non-Aqueous Phase Liquids (NAPLs));

(F) soil and groundwater contamination information, in accordance with §334.80(b) of this title (relating to Investigation for Soil and Groundwater Cleanup);

(G) corrective action plan, in accordance with §334.81 of this title (relating to Corrective Action Plan);

(H) notification of cleanup initiation, in accordance with §334.81(e) of this title;

(I) certification of compliance with corrective action plan, in accordance with §334.81(h) [~~§334.81(g)~~] of this title; and

(J) public notices related to corrective action plans, in accordance with §334.82(b) of this title (relating to Public Participation);

(9) notifications and reports relating to financial assurance requirements, in accordance with Chapter 37, Subchapter I of this title (relating to Financial Assurance for Petroleum Underground Storage Tank Systems); and

(10) any other reports, filings, notifications, or other submittals required by this chapter, or otherwise required by the agency to demonstrate compliance with the provisions of this chapter. When agency requirements specify documents that must be prepared by, or prepared under, the supervision of a duly licensed professional engineer, a duly licensed professional geoscientist, or a duly licensed professional surveyor, those documents must be prepared in accordance with all requirements of statute and rule applicable to that respective professional.

(b) Recordkeeping.

(1) General recordkeeping requirements.

(A) Owners and operators of UST systems are responsible for developing and maintaining all records required by the provisions of this chapter.

(B) Except as provided in subparagraphs (C) and (D) of this paragraph, legible copies of all required records pertaining to a UST system must be maintained in a secure location on the premises of the UST facility, must be immediately accessible for reference and use by the UST system operator, and must be immediately available for inspection upon request by agency personnel.

(C) Except as provided in clause (v) of this subparagraph, in the event that copies of the required records cannot reasonably be maintained on the premises of the UST facility, then such records may be maintained at a readily accessible alternate site, provided that the following conditions are met.

*(i)* If the UST system is in operation, the records must be readily accessible for reference and use by the UST system operator.

*(ii)* The records must be readily accessible and available for inspection upon request by agency personnel.

*(iii)* The owner or operator must provide the following information (in writing) to the agency's central office and to the agency's appropriate regional office:

*(I)* the specific location where the required records are maintained; and

*(II)* the name, address, and telephone number of the authorized custodian of such records.

*(iv)* The filing of the written information required in clause (iii) of this subparagraph must be accomplished no later than October 29, 1989, 30 days after a UST installation or replacement has been completed, or 30 days after the UST records are moved to an alternate site, whichever is later or applicable, as provided in §334.7(d) of this title.

*(v)* The conditional authorization otherwise allowed under this subparagraph for records maintenance at an alternative, off-premises location is not applicable to the UST delivery certificate (or temporary delivery authorization, if applicable) issued by the agency under §334.8(c) of this title. This UST delivery certificate must be maintained on the premises of all facilities with regulated USTs, must be posted by the UST system operator, and must be visible to the person(s) performing deliveries to the UST system.

(D) For UST systems which have been permanently removed from service in accordance with the applicable provisions of §334.55 of this title, the facility owner may submit the appropriate records required by this chapter to the agency in lieu of maintaining the records on the premises or at an alternative site, provided that the following conditions are met:

*(i)* the facility is no longer operated in a manner that requires the underground storage of regulated substances, and all UST systems at the facility have been permanently removed from service;

*(ii)* the facility owner must provide written justification adequate to explain why such records cannot be maintained on the premises of the UST facility or at a readily accessible alternative site; and

*(iii)* the records must be submitted at one time in one package for each UST facility, and the records must be appropriately labeled with the UST facility location information and the UST facility identification number.

(2) Required records and documents. Owners and operators of UST systems must assure that all recordkeeping requirements in this chapter are met, including the following records and documentation (as applicable).

(A) Legible copies of the following general records must be maintained for the operational life of the UST system:

*(i)* original and amended registration documents, in accordance with §334.7 of this title;

*(ii)* original and amended certifications for UST installations and financial assurance, in accordance with §334.8 of this title;

*(iii)* notification to UST purchaser, in accordance with §334.9 of this title (relating to Seller's Disclosure).

(B) Legible copies of applicable records and documents related to technical standards for UST systems must be maintained in accordance with the following provisions:

*(i)* application documents and the agency's approval letter for any variances or alternative procedures, in accordance with §334.43 of this title;

*(ii)* records demonstrating compliance with technical standards and installation standards for new UST systems, in accordance with §334.45(f) of this title (relating to Technical Standards for New Underground Storage Tank Systems) and §334.46(i) of this title (relating to Installation Standards for New Underground Storage Tank Systems);

*(iii)* records demonstrating compliance with the minimum upgrading requirements for existing UST systems, in accordance with §334.47(e) [~~§334.47(d)~~] of this title (relating to Technical Standards for Existing Underground Storage Tank Systems);

*(iv)* operation and maintenance records (including periodic testing and walkthrough inspections), in accordance with §334.42 and §334.48 [~~§334.48(g)~~] of this title (relating to General Standards; and General Operating and Management Requirements);

*(v)* corrosion protection records, in accordance with §334.49(e) of this title (relating to Corrosion Protection);

*(vi)* release detection records, in accordance with §334.50(e) of this title (relating to Release Detection);

*(vii)* spill and overfill control records, in accordance with §334.51(c) of this title (relating to Spill and Overfill Prevention and Control);

*(viii)* records for repairs and relining of a UST system, in accordance with §334.52(e) [~~§334.52(d)~~] of this title (relating to Underground Storage Tank System Repairs and Relining);

*(ix)* records for reuse of used tanks, in accordance with §334.53(c) of this title (relating to Reuse of Used Tanks);

*(x)* records for temporary removal of UST systems from service, in accordance with §334.54(e)(4) [~~§334.54(f)(4)~~] of this title (relating to Temporary Removal from Service);

*(xi)* records for permanent removal of UST systems from service, in accordance with §334.55(f) of this title.

(C) Legible copies of all required financial assurance records must be maintained in accordance with the applicable provisions of Chapter 37, Subchapter I of this title.

(D) Legible copies of previous and current registration and self-certification forms required to be filed annually with the agency under §334.8(c) of this title, as well as UST delivery certificates, must be maintained for at least five years from the original date of submittal.

*§334.19. Fee on Delivery of Petroleum Product.*

(a) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection and pursuant to Texas Water Code (TWC), §26.3574 [~~§26.3573~~]. "Withdrawal from bulk" means[~~"~~] the removal of a petroleum product from a bulk facility storage tank for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for distribution or sale in this state. Each supplier [~~operator of a bulk facility~~] on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows, subject to future adjustments made under subsection (b) of this section:

(1) not more than $3.75 [~~$2.75~~] for each delivery [~~made after June 30, 2012~~] into a cargo tank having a capacity of less than 2,500 gallons.

(2) not more than $7.50 [~~$5.50~~] for each delivery [~~made after June 30, 2012~~] into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons.

(3) not more than $11.75 [~~$8.65~~] for each delivery [~~made after June 30, 2012~~] into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons.

(4) not more than $15.00 [~~$11~~] for each delivery [~~made after June 30, 2012~~] into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) not more than $7.50 [~~$5.50~~] for each increment of 5,000 gallons or any part thereof delivered [~~after June 30, 2012~~] into a cargo tank having a capacity of 10,000 gallons or more.

(b) TCEQ may adjust the fee rates in subsection (a) of this section through an appropriate notification process, such as but not limited to *Texas Register* publication with public comment, based on the agency's cost of administering this chapter in accordance with TWC, §26.3574(b-1), but not to exceed the maximum rates set by TWC [~~Texas Water Code~~], §26.3574. The projected rates will account for the biennial appropriations to the agency from the Petroleum Storage Tank Remediation Account Number 655, as well as fund obligations for Account Number 655, with projected revenue from the fee based on such factors as estimated fuel sales, population growth, consumer price index, and gas production.

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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Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6812

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## SUBCHAPTER C. TECHNICAL STANDARDS

### 30 TAC §§334.42, 334.45 - 334.48, 334.50 - 334.52, 334.54, 334.55

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground and aboveground storage tanks; TWC, §26.347, which requires the commission to adopt performance standards, including design, construction, installation, release detection, and compatibility standards for existing and new underground storing tank systems; TWC, §26.3475, which requires underground storage tank systems to comply with commission requirements for tank release detection equipment and spill and overfill equipment; and TWC, §26.348, which directs the commission to adopt standards of performance for maintaining a leak detection system.

The United States Environmental Protection Agency has amended the rules pertaining to underground storage tank requirements and standards (40 Code of Federal Regulations (CFR) Part 280) and state program approval (40 CFR Part 281), effective October 13, 2015. TWC, §26.357, requires standards and rules concerning underground storage tanks adopted by

the commission to be at least as stringent as federal requirements. The rules implement or track as closely as possible the amended federal rules.

*§334.42. General Standards.*

(a) All components of any new or existing underground storage tank (UST) system subject to the provisions of this subchapter shall be designed, installed, maintained, and operated in a manner that will prevent releases of regulated substances due to structural failure or corrosion.

(b) All [~~For all~~] components of any new or existing UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment) subject to the provisions of this subchapter which contain, have contained, or will contain a regulated substance, the surfaces of such components which are in direct contact with the regulated substance shall be constructed of or lined with materials that are compatible with the substance stored in such components. Any compatibility determination or analysis shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory (such as American Petroleum Institute Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations"). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

(1) certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored;

(2) for equipment or component manufacturer approval, the manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or

(3) use another option determined by the executive director to be no less protective of human health and the environment than the options listed in this subsection.

(c) The owners and operators of UST systems subject to the provisions of this subchapter and those persons and/or business entities who engage in, perform, or supervise the installation, repair, or removal of UST systems shall be responsible for ensuring that those UST systems are designed, installed, repaired, removed, and operated in accordance with the provisions of this subchapter, as provided under §334.12(b) of this title (relating to Other General Provisions) and under the provisions of Chapter 70 of this title (relating to Enforcement).

(d) When provisions of this subchapter require compliance with a specific code or standard of practice developed by a nationally recognized association or independent testing laboratory, the most recent version of the referenced code in effect at the time of the regulated UST activity shall be applicable.

(e) Compliance with the provisions of this subchapter shall not relieve an owner or operator of a [~~an~~] UST system from compliance with other applicable regulations legally developed by other governmental entities. This requirement is more fully discussed in §334.12(a) of this title.

(f) Unless otherwise stated in a variance approved by the agency in accordance with §334.43 of this title (relating to Variances and Alternative Procedures), the requirements of this subchapter shall take precedence if and when such requirements are determined to be in conflict with any provisions contained in the following:

(1) any code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

(2) the manufacturer's [~~manufacturers'~~] specifications and instructions for installation and operation of UST equipment.

(g) Any underground component of a [~~an~~] UST system installed on or after September 29, 1989, shall be properly protected from corrosion by one or more of the allowable methods in §334.49(b) of this title (relating to Corrosion Protection).

(h) Any new tank or line or dispenser installed as part of a UST system on or after January 1, 2009, shall incorporate secondary containment meeting the applicable requirements of §334.45(d) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(i) Any sumps (including dispenser sumps) or manways installed prior to January 1, 2009, which are utilized as an [~~a~~] integral part of a UST release detection system to monitor the interstitial space of a secondarily contained piping system, and any overspill containers or catchment basins installed at any time, which are associated with a UST system must be inspected at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight. Any liquid or debris found in them during that inspection or an agency or agency-authorized inspection must be removed [~~and properly disposed of~~] within 96 hours of discovery and properly disposed. This requirement applies through December 31, 2020, after which the requirements in §334.48(h) of this title (relating to General Operating and Management Requirements), shall apply.

*§334.45. Technical Standards for New Underground Storage Tank Systems*

(a) General requirements.

(1) Any new underground storage tank (UST) system installed on or after September 29, 1989, [~~the effective date of this subchapter~~] shall be in compliance with the provisions of this section during the entire operational life of the UST system.

(2) Any new UST system shall be designed, installed, and operated in a manner that will prevent releases due to structural failure or corrosion for the operational life of the UST system.

(3) The surfaces of all components of the new UST system which are in direct contact with a regulated substance shall be constructed of or lined with materials that are compatible with such regulated substances.

(4) All components of the new UST system which convey, contain, or store regulated substances shall be properly protected from corrosion in accordance with the applicable provisions in §334.49 of this title (relating to Corrosion Protection).

(5) All tanks, piping, and other ancillary equipment in a new UST system shall be installed in accordance with the requirements of §334.46 of this title (relating to Installation Standards for New Underground Storage Tank Systems).

(b) Technical standards for new tanks.

(1) Tank design and construction. Each new tank shall be properly designed, constructed, and protected from corrosion in accordance with one or more of the methods listed in subparagraphs (A) - (G) of this paragraph, and in accordance with specific codes and standards of practice developed by nationally recognized associations and independent testing laboratories, as referenced in the following subparagraphs:

(A) The tank may be constructed of fiberglass-reinforced plastic. Tanks constructed under this method shall meet an industry code of practice such as:

*(i)* Underwriters Laboratories, Inc. (UL) Standard 1316, "[~~Standard for Safety for~~] Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures;" or[~~;~~]

*(ii)* Underwriter's Laboratories of Canada (ULC) S615, "Standard for Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids."

(B) The tank may be constructed of coated steel and equipped with a factory-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a factory-installed cathodic corrosion protection system meeting the appropriate design and operational requirements in §334.49(c)(1) of this title, and shall meet an industry code of practice such as [~~the following standards~~]:

*(i)* UL Standard 58, "Standard for [~~Safety for~~] Steel Underground Tanks for Flammable and Combustible Liquids;"[~~;~~ ~~and~~]

*(ii)* Part I of UL Standard 1746, "Standard for [~~Safety for~~] External Corrosion Protection Systems For [~~for~~] Steel Underground Storage Tanks;"[~~;~~] or

*(iii)* Steel Tank Institute (STI) Standard, "[~~Specification for~~] sti-P$_3$ Specification and Manual for [~~System of~~] External Corrosion Protection of Underground Steel Storage Tanks."

(C) The tank may be constructed of coated steel and equipped with a field-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a field-installed cathodic protection system meeting the appropriate design and operational requirements in §334.49(c)(2) of this title, and shall meet the following standards:

*(i)* UL Standard 58, "Standard for [~~Safety for~~] Steel Underground Tanks for Flammable and Combustible Liquids;"[~~;~~] and

*(ii)* NACE International Standard SP0285 [~~RP0285-95~~], "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."

(D) The tank may be factory-constructed either as a steel/fiberglass-reinforced plastic composite tank, or as a steel tank with a bonded fiberglass-reinforced plastic external cladding or as a steel tank with a bonded fiberglass reinforced polyurethane coating. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements:

*(i)* The tank shall be equipped with a factory-applied external fiberglass-reinforced plastic or fiberglass reinforced polyurethane cladding or laminate which has a total dry film thickness of 100 mils minimum and 125 mils nominal;

*(ii)* The tank shall be operated and maintained in accordance with the requirements of §334.49 of this title;

*(iii)* The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards; and

*(iv)* [~~(iii)~~] The tank shall be designed and fabricated in accordance with one or more of the following standards:

*(I)* Part II of UL Standard 1746, "Standard for [~~Safety for~~] External Corrosion Protection Systems For [~~for~~] Steel Underground Storage Tanks;"[~~;~~]

*(II)* [~~Steel Tank Institute (~~]STI[~~)~~] ACT-100, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks;"[~~;~~] or

*(III)* any other UL, [~~or~~] STI, or ULC [~~Underwriters' Laboratories of Canada (ULC)~~] standard which incorporates the requirements contained in the standards listed in either subclause (I) or (II) of this clause.[~~; and~~]

~~*(iv)* The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards.~~]

(E) The tank may be factory-constructed as a steel tank with a bonded polyurethane external coating. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements:

*(i)* The tank shall be equipped with a factory-applied external polyurethane coating which has a minimum dry film thickness of 70 mils;

*(ii)* The tank shall be operated and maintained in accordance with the applicable requirements of §334.49 of this title;

*(iii)* The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards; and

*(iv)* [~~(iii)~~] The tank shall be designed and fabricated in accordance with one or more of the following standards:

*(I)* Part IV of UL Standard 1746, "Standard for [~~Safety for~~] External Corrosion Protection Systems For [~~for~~] Steel Underground Storage Tanks;"[~~;~~]

*(II)* [~~Steel Tank Institute (~~]STI[~~)~~] ACT-100-U, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks;"[~~;~~] or

*(III)* any other UL, STI [~~or STL~~], or ULC [~~Underwriters' Laboratories of Canada (ULC)~~] standard which incorporates the requirements contained in the standards listed in either subclause (I) or (II) of this clause.[~~; and~~]

~~*(iv)* The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards.~~]

(F) The tank may be factory-constructed as a steel tank completely contained within a nonmetallic external tank jacket. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements:

*(i)* The tank shall be equipped with a factory-constructed nonmetallic external jacket which provides both secondary containment and corrosion protection;

*(ii)* The tank shall be operated and maintained in accordance with the applicable requirements of §334.49 of this title;

*(iii)* The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards; and

*(iv)* [~~(iii)~~] The tank shall be designed and fabricated in accordance with the following:

*(I)* Part III of UL Standard 1746, "Standard for [~~Safety for~~] External Corrosion Protection Systems For [~~for~~] Steel Underground Storage Tanks;"[~~;~~] or

*(II)* STI Specification F922, "Steel Tank Institute Specification for Permatank;" or

*(III)* [~~(II)~~] any other UL, [~~or~~] STI, or ULC [~~Underwriters' Laboratories of Canada (ULC)~~] standard which incorporates the requirements contained in the standard listed in subclause (I) or (II) of this clause.[~~; and~~]

~~*[(iv)* The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods utilized in accordance with applicable industry standards.]~~

(G) The tank may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the agency to control corrosion and prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and safety and the environment than the methods described in subparagraphs (A) - (F) [~~(D)~~] of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Spill and overfill prevention equipment. All new tanks shall be equipped with spill and overfill prevention equipment, in accordance with §334.51(b) of this title (relating to Spill and Overfill Prevention and Control).

(3) Release detection for new tanks. All new tanks shall be monitored for releases of regulated substances in accordance with §334.50 of this title (relating to Release Detection).

(4) Other new tank components.

(A) Fittings. All metallic tank fittings (e.g., bung hole plugs) shall be protected from corrosion and shall be either:

*(i)* isolated from the backfill material and groundwater or any other water;

*(ii)* thoroughly coated with a suitable dielectric material, in accordance with the tank manufacturer's specifications; or

*(iii)* cathodically protected in accordance with the applicable provisions in §334.49(c) of this title.

(B) Striker plates. Factory-installed striker plates shall be located on the interior bottom surface of each tank under all fill and gauge openings.

(C) Dielectric bushings or fittings. In order to provide electrical isolation of the tank from other connected metal components, all coated steel tanks equipped with either a factory-installed cathodic protection system or a factory-applied fiberglass-reinforced plastic laminate or cladding shall also be fitted with dielectric bushings or fittings at each tank opening where other metal UST system components are connected, except for unused openings closed with metal plugs and for openings where the connected component is non-metallic.

(c) Technical standards for new piping.

(1) Piping design and construction. All new underground piping (including associated valves, fittings, and connectors) in a [~~an~~] UST system shall be properly designed, constructed, and protected from corrosion in accordance with one of the methods listed in subparagraphs (A) - (D) of this paragraph and in accordance with specific codes and standards of practice developed by nationally recognized associations and independent testing laboratories, as referenced in the following subparagraphs.

(A) The piping may be constructed of fiberglass-reinforced plastic. Piping constructed under this method shall meet the following standards:

*(i)* UL Standard 971, "Standard for [~~Safety for~~] Nonmetallic Underground Piping For [~~for~~] Flammable Liquids;"[~~;~~] and

*(ii)* ULC Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids." [~~UL Standard 567, "Standard for Safety for Pipe Connectors for Petroleum Products and LP Gas."~~]

(B) The piping may be constructed of coated steel. Piping constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be cathodically protected with a field-installed cathodic protection system meeting the appropriate design and operational requirements in §334.49(c) of this title, and shall meet the applicable provisions of the following standards.

*(i)* UL Standard 971A, "Outline of Investigation for Metallic Underground Fuel Pipe;" [~~NFPA Standard 30, "Flammable and Combustible Liquids Code";~~]

*(ii)* STI Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems;" [~~API Publication 1615, "Installation of Underground Petroleum Storage Systems";~~]

*(iii)* American Petroleum Institute [~~API~~] Publication 1632, "Cathodic Protection of Underground Storage Tanks and Piping Systems;" [~~; and~~]

*(iv)* NACE International Standard Practice SP0169 [~~RP0169-96~~], "Control of External Corrosion on Underground or Submerged Metallic Piping Systems; and[~~,~~]"

*(v)* NACE International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."

(C) The piping may be constructed of flexible nonmetallic material. Piping constructed under this method shall meet the following standards:

*(i)* UL Standard 971, "Standard for [~~Safety for~~] Nonmetallic Underground Piping For [~~for~~] Flammable Liquids;"[~~;~~] and

*(ii)* ULC Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids." [~~UL Standard 567, "Standard for Safety for Pipe Connectors for Petroleum Products and LP Gas."~~]

(D) The piping may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the agency to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph. Any alternative methods must be submitted and approved in accordance with the procedures in §334.43 of this title.

(2) Release detection for new piping. All new piping shall be monitored for releases of regulated substances in accordance with §334.50(b)(2) of this title.

(3) Other new piping components.

(A) For piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit, a

UL-listed (or agency accepted equivalent listing by [~~Underwriters' Laboratories of Canada~~ (]ULC) emergency shut-off [~~shutoff~~] valve (also called a shear or impact valve) shall be installed in each pressurized delivery or product line and shall be securely anchored at the base of the dispenser. This shut-off valve shall include a fusible link, and shall be designed to provide a positive shut-off of product flow in the event that a fire, collision, or other emergency occurs at the dispenser end of the pressurized line.

(B) UL-listed (or agency accepted equivalent listing by [~~Underwriter's Laboratories of Canada~~ (]ULC[~~)~~]], or Factory Mutual Research Corporation (FMRC)) flexible connectors shall be installed at both ends of each pressurized product or delivery line to provide flexibility and to allow for vertical and horizontal movement in the piping, unless inherently flexible piping is installed in accordance with manufacturer's requirements and in accordance with an applicable code or standard of practice developed by a nationally recognized association or independent testing laboratory. The use of metal swing joints in a pressurized UST piping system is specifically prohibited.

(C) If buried and in contact with soil or backfill materials, all metallic pipe, valves, and fittings (including flexible connectors) shall be equipped with corrosion protection meeting the applicable requirements in §334.49 of this title.

(D) Only UL-listed (or agency accepted equivalent listing by [~~Underwriters' Laboratories of Canada~~ (]ULC[~~)~~]], or [~~Factory Mutual Research Corporation~~ (]FMRC[~~)~~]) flexible connectors or nonmetallic piping listed for aboveground use or listed for use in sumps can be used without backfill cover in sumps, manways, or dispenser pans.

(d) Secondary containment for UST systems.

(1) Applicability.

(A) A secondary containment system meeting the requirements of this subsection shall be installed as part of any hazardous substance UST system[~~, in accordance with the applicable schedules in §334.44(a)(2) and (b)(2) of this title (relating to Implementation Schedules)~~].

(B) A double-wall tank and piping system (or approved alternative) meeting the applicable requirements of this subchapter shall be installed for any UST system situated on [~~in~~] the Edwards Aquifer recharge or transition zones or contributing zone within the transition zone, in accordance with Chapter 213 of this title (relating to Edwards Aquifer).

(C) A [~~An~~] UST system, at a minimum, shall incorporate secondary containment as specified in Texas Water Code, §26.3476, if the UST system is located in an area described in that provision.

(D) The agency may specifically require the installation of a secondary containment system meeting the requirements of this subsection at other times when necessary for the protection of human health or safety or the environment.

(E) Requirements applicable to new tanks, lines and/or dispensers (including related sumps or manways) installed on or after January 1, 2009:

*(i)* Any new tank or line installed as part of a UST system must incorporate secondary containment in accordance with the applicable requirements of this subchapter, except that external liners will not be allowed as a secondary containment method.

*(ii)* Up to 35% of the total original length of an existing single-wall [~~singlewall~~] line can be replaced with new single-wall [~~singlewall~~] line in accordance with the applicable requirements of this subchapter without triggering the secondary containment requirement for that line, unless the new line segment connects the existing line to a new dispenser. If more than 35% of the total original length of an existing single-wall [~~singlewall~~] line is to be replaced, or the new line segment connects the existing line to a new dispenser, that line segment must be replaced with a line which incorporates secondary containment.

*(iii)* The interstice of the secondarily contained tank and/or line must be monitored in accordance with the requirements of §334.50(d)(7) of this title.

*(iv)* Any sumps (including dispenser sumps) or manways which are used for interstitial monitoring of piping [~~included in a new secondarily contained UST system which are utilized as an integral part of a UST release detection system to monitor the interstitial space of a new secondarily contained piping system~~] must be compatible with the stored substance(s), must be installed and maintained in a manner that assures that their sides, bottoms, and any penetration points are liquid exists in TAC tight, and must be inspected in accordance with the requirements in §334.42 and §334.48 of this title (relating to General Standards; and General Operating and Management Requirements) [~~for tightness annually and tested for tightness immediately after installation and at least once every three years thereafter~~].

*(v)* Under-dispenser containment in the form of a dispenser sump is required for any new dispenser. A new dispenser is defined in §334.2 of this title (relating to Definitions). New dispensers must employ a dispenser sump which is compatible with the stored substance; is installed and maintained in a manner that assures that its sides, bottoms, and any penetration points are liquid tight; and must be inspected for tightness annually and tested for tightness, immediately after installation and at least once every three years thereafter. [~~A new dispenser is defined as:~~]

*~~(I)~~* ~~any dispenser which is installed where none previously existed; or~~]

*~~(II)~~* ~~any existing dispenser which is removed and replaced with another dispenser and transitional piping components beneath the replacement dispenser (e.g., flexible connectors or piping risers) which serve to connect the dispenser to the underground piping are replaced. Each new dispenser must employ a dispenser sump which is compatible with the stored substance, is installed and maintained in a manner that assures that its sides, bottoms, and any penetration points are liquid tight, and must be inspected for tightness annually and tested for tightness, immediately after installation and at least once every three years thereafter.~~]

*(vi)* Any sumps (including dispenser sumps) or manways which are used for interstitial monitoring of piping [~~included in a new secondarily contained UST system which are utilized as an integral part of a UST release detection system to monitor the interstitial space of a new secondarily contained piping system, and any new dispenser sumps~~] must be equipped with a liquid sensing probe(s) which will alert the UST system owner or operator if more than two inches of liquid collects in any sump or manway.

*(vii)* Liquids and/or debris found in any sumps (including dispenser sumps) or manways which are used for interstitial monitoring of piping must be removed within 96 hours of alert or discovery and properly disposed [~~included in a new secondarily contained UST system and utilized as an integral part of a UST release detection system to monitor the interstitial space of a new secondarily contained piping system, and/or in any new dispenser sumps must be removed and properly disposed of within 96 hours of alert or discovery~~].

*(viii)* Inspections and testing.[:]

*(I)* Inspections must be performed by a qualified person who is competent to conduct the inspection in accordance with recognized industry practices and in accordance with industry standards, if applicable.

*(II)* Testing of tanks and/or lines shall be performed in accordance with the applicable requirements of this chapter. Testing of sumps (including dispenser sumps) or manways [(including dispenser sumps)] must be performed by a qualified person who is competent to conduct the inspection in accordance with recognized industry practices and in accordance with industry standards, if applicable.

(2) General performance standards. All secondary containment systems installed as part of a UST system shall be:

(A) designed, installed, and operated in a manner that will prevent the release of regulated substances from such secondary containment system into the surrounding soil, backfill, groundwater, or surface water during the operational life of the UST system;

(B) capable of collecting and containing releases of regulated substances from any portion of the primary containment vessels (e.g., tanks and piping) until such released substances are removed;

(C) constructed of or lined with materials which are compatible with the stored regulated substance;

(D) constructed of materials having sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the stored regulated substance (and any other substance to which they may normally be exposed), climatic conditions, the stresses of installation, and the stresses of daily operation (including stresses from nearby vehicular traffic); and

(E) installed on a properly designed and properly placed bedding or backfill material which is capable of providing adequate support for the secondary containment system, capable of providing adequate resistance to any pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Secondary containment for tanks. One or more of the following methods may be used to provide secondary containment for tanks.

(A) Double-wall tanks. Double-wall tanks may be used to comply with the secondary containment requirements of this subchapter, provided that such tanks shall meet the following additional provisions.

*(i)* The secondary wall of such double-wall tanks shall be structurally designed to contain and support the full-load capacity of the primary tank without failure.

*(ii)* The double-wall tank (including both the primary and secondary tank walls) shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title.

*(iii)* The double-wall tank shall be designed, installed, operated, and maintained in accordance with one of the applicable codes or standards of practice listed as follows:

*(I)* for fiberglass-reinforced plastic tanks: UL Standard 1316, "[Standard for Safety for] Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures;[.]"

*(II)* for steel tanks: STI Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks;[,]" UL Standard 58, "Standard for [Safety for] Steel Underground Tanks for Flammable and Combustible Liquids;[,]" and other applicable UL standards for double-wall steel tanks; and

*(III)* any other code or standard of practice developed by a nationally recognized association or independent testing laboratory that has been reviewed and determined by the agency to be no less protective of human health and safety and the environment than the standards described in subclauses (I) and (II) of this clause, in accordance with procedures in §334.43 of this title.

*(iv)* The double-wall tank system shall be installed in accordance with the requirements in §334.46(f)(2) of this title.

(B) External liners. Tank excavation liners may be used to comply with the secondary containment requirements of this paragraph, provided that such liners shall meet the following additional provisions.

*(i)* The tank excavation liner shall consist of an artificially constructed material that is of sufficient strength, thickness, puncture-resistance, and impermeability (i.e., allow permeation at a rate of no more than 0.25 ounces per square foot per 24 hours for the stored regulated substance) in order to permit the collection and containment of any releases from the UST system. The criteria for evaluation of the liner for compliance with this clause shall be in accordance with accepted industry practices for materials testing. Types of liners which may be used include certain reinforced and unreinforced flexible-membrane liners, rigid fiberglass-reinforced plastic liners, and reinforced concrete vaults.

*(ii)* The liner shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title.

*(iii)* The liner shall be sufficiently compatible with the stored regulated substance, so that any regulated substance collected in the liner system shall not cause any substantial deterioration of the liner that would allow the regulated substances to be released into the environment.

*(iv)* The liner shall be designed to provide a containment volume of no less than 100% of the full capacity of the largest tank within its containment area.

*(v)* The liner shall be installed in accordance with the requirements in §334.46(f)(4) of this title.

(4) Secondary containment for piping. One or more of the following methods shall be used to provide secondary containment for piping.

(A) Double-wall piping. Double-wall piping systems may be used to comply with the secondary containment requirements of this subchapter, provided that such piping systems meet the following additional provisions.

*(i)* The double-wall piping system shall be designed to contain a release from any portion of the primary piping within the secondary piping walls.

*(ii)* The double-wall piping system (including both the primary and secondary piping) shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title.

*(iii)* The double-wall piping system shall be designed, installed, and operated in accordance with a code or standard

of practice developed by a nationally recognized association or independent testing laboratory.

*(iv)* The double-wall piping system shall be installed in accordance with the requirements in §334.46(f)(3) of this title.

(B) External liners. External piping trench liners may be used to comply with the secondary containment requirements of this paragraph, provided that such liners meet the additional provisions in paragraph (3)(B) of this subsection.

(e) Technical standards for other new UST system equipment.

(1) Vent lines. All underground portions of the vent lines (including all associated underground valves, fittings, and connectors) shall be designed and constructed in accordance with the piping requirements in subsection (c)(1) of this section, shall be properly protected from corrosion in accordance with one of the allowable methods in §334.49 of this title, and shall be installed in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(2) Fill pipes. All fill pipes (including any connected fittings) shall be:

(A) designed and constructed in accordance with the piping requirements in subsection (c)(1) of this section;

(B) properly protected from corrosion in accordance with one of the allowable methods in §334.49 of this title;

(C) properly enclosed in or equipped with spill and overfill prevention equipment as required in §334.51(b) of this title; and

(D) equipped with a removable or permanent factory-constructed drop tube which shall extend to within 12 inches of the tank bottom.

(3) Release detection equipment. All release detection equipment shall be designed and constructed in accordance with the requirements for the particular type of equipment, as described in the applicable provisions in §334.50 of this title.

(4) Monitoring wells and observation wells.

(A) All monitoring wells and observation wells installed on or after September 29, 1989, [~~the effective date of this subchapter~~] shall be designed, constructed, and installed in accordance with the requirements in §334.46(g) of this title.

(B) Each separate tank hole in a new UST system installed on or after September 29, 1989, [~~the effective date of this subchapter~~] shall include a minimum number of four-inch diameter (nominal) observation wells, as specified in the following clauses:

*(i)* for a tank hole containing only one tank, a minimum of one observation well shall be required; and

*(ii)* for a tank hole containing two or more tanks, a minimum of two observation wells shall be required.

(f) Records for technical standards for new UST systems. Owners and operators of new UST systems shall maintain adequate records to demonstrate compliance with the applicable provisions in this section, which at a minimum, shall include all records required in §334.46(i) of this title. All records shall be maintained in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

*§334.46. Installation Standards for New Underground Storage Tank Systems.*

(a) General installation procedures. Any new underground storage tank (UST) system installed on or after September 29, 1989, [~~the effective date of this subchapter~~] shall be installed in compliance with the provisions of this section.

(1) Standards. All tanks, piping, and associated equipment shall be installed in accordance with at least one of the following standards, as applicable:

(A) Petroleum Equipment Institute [~~PEI~~] Publication RP-100, "Recommended Practices for Installation of Underground Liquid Storage Systems[~~"~~];"

(B) American Petroleum Institute [~~API~~] Publication 1615, "Installation of Underground Petroleum Storage Systems[~~"~~];"

(C) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages;" [~~ANSI Standard B31.3, "Petroleum Refinery Piping" and ANSI Standard B31.4, "Liquid Petroleum Transportation Systems";~~] or

(D) any other code or standard of practice developed by a nationally recognized association or independent testing laboratory that has been reviewed and determined by the agency to be no less protective of human health and safety and the environment than the standards described in subparagraphs (A) - (C) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Installation personnel. All tanks, piping, and associated equipment shall be installed by personnel possessing the appropriate skills, experience, competence, and, if applicable, any required certification or license to complete the installation in accordance with recognized industry practices and this chapter, and in a manner designed to minimize the possibility of UST system failures and the releases of regulated substances.

(3) Damages.

(A) All reasonable precautions shall be taken to prevent improper handling and damaging of the tanks and piping during the unloading and installation processes.

(B) Tanks and piping shall be physically inspected by the installer prior to installation.

(C) Any damage shall be repaired in accordance with the manufacturer's specifications; otherwise, damaged tanks and/or piping shall be replaced.

(4) Excavation.

(A) The tank excavation zone and piping trenches shall provide adequate vertical and horizontal space for the tanks, piping, and associated equipment, for the proper placement and compaction of bedding and backfill materials (particularly under the lower quadrant of the tank's circumference), and for adequate cover and paving to accommodate anticipated traffic loads.

(B) Tank excavation shall be performed in a manner that will avoid the undermining of foundations and other existing structures, and shall be constructed not less than three feet from the base of adjacent structures (unless specifically approved by a licensed professional engineer) and not less than three feet from any underground utility easements and property lines.

(5) Bedding and backfill.

(A) The bedding and backfill shall consist of clean, washed, suitably graded, and noncorrosive sand, crushed rock, or pea gravel.

(B) The bedding and backfill material shall be selected and placed in accordance with the tank and piping manufacturer's specifications, and shall be placed and compacted in uniform lifts, as appropriate, to assure proper support and protection of the tank and piping after installation.

(C) Minimum bedding and backfill requirements shall be in accordance with the applicable industry standard for the construction, as prescribed in this subsection.

(D) The placement of tanks or piping directly on native soils, concrete pads or saddles, or any other underlayment except the bedding materials listed in this paragraph is specifically prohibited.

(b) Anchoring systems. Unless otherwise approved by the agency in accordance with §334.43 of this title, all USTs located in areas subject to high water tables or flooding shall be protected from any flotation or movement which could jeopardize the integrity of the UST system.

(1) Methods to prevent tank flotation shall be in accordance with the tank manufacturer's specifications and shall be one (or a combination) of the following methods:

(A) the provision of ample backfill and/or paving on top of the tank to offset the buoyancy forces;

(B) the installation of a properly designed deadman anchoring system, where the concrete beams shall be placed outside the vertical extension of the tank diameter and where the length of the beams shall extend at least one foot beyond the ends of the tank; or

(C) the installation of a properly designed concrete hold-down pad anchoring system beneath the tank, where the pad's width and length shall extend at least one foot beyond the tank sides and ends in all directions.

(2) The installation of anchoring straps or cables shall be in accordance with the tank manufacturer's specifications. All parts of the straps, cables, and hardware shall be of corrosion-resistant material or, if metallic, shall be thoroughly coated or wrapped with a suitable dielectric material.

(c) Piping system installation.

(1) The piping layout shall be designed in a manner that will minimize the crossing of other lines and conduits, and the crossing of tanks and other UST system components. Where such crossing is unavoidable, adequate clearance shall be provided to prevent contact.

(2) Traps, sumps, or sags in the lines shall be avoided, and all piping shall slope at least 1/8 inch per foot in the direction of the tank.

(3) All piping joints shall be accurately cut, deburred, cleaned, and sealed with appropriate piping sealant, bonding agent, or adhesive in accordance with the piping manufacturer's specifications so as to provide liquid-tight connections.

(d) Installation testing for new tanks and piping.

(1) Air testing of new tanks shall be conducted in accordance with the tank manufacturer's specifications.

(A) Air testing for single-wall tanks shall include the soaping of all surfaces, seams, and fittings, pressurizing and gauging with three to five pounds per square inch gauge (psig) air pressure for at least one hour, monitoring the gauge for pressure drops, and inspecting for bubbles.

(B) Air testing for double-wall tanks shall be in accordance with subsection (f)(2)(B) of this section.

(C) Gauges used in air testing procedures shall have a maximum range not exceeding 15 psig. All tanks undergoing air pressure testing shall be equipped with a pressure relief device capable of relieving the total output of the compressed air source at a pressure of not more than six psig.

(2) Air testing of new piping, fittings, and valves shall be conducted in accordance with the manufacturer's specifications. New piping shall be tested before being covered and placed into use. Air testing of piping shall include the soaping of all joints, pressurizing with compressed air to 150% of the maximum piping operating pressure, or a minimum of 50 psig, for at least one hour, and inspecting for bubbles. Air testing for secondary containment piping shall be in accordance with subsection (f)(3)(B) of this section.

(3) In addition to the air tests, a tank tightness test and a piping tightness test meeting the requirements of §334.50(b)(2)(A)(ii)(I) and (d)(1)(A) [~~§334.50(d)(1)(A) and (b)(2)(A)(ii)(I), respectively,~~] of this title (relating to Release Detection) shall be performed after the backfill has been placed but prior to bringing the new UST system into operation.

(4) Additional tests required. In addition to the air tests and tightness tests required in this subsection, the following additional installation tests shall be required, as applicable.

(A) For fiberglass-reinforced plastic tanks, the tank diameter shall be accurately measured prior to and after installation to ascertain the amount of vertical deflection, as specified in the tank manufacturer's installation procedures. Except when specifically authorized in writing by an authorized representative of the tank manufacturer, tanks shall not be placed into operation if the measured vertical deflection exceeds the manufacturer's maximum allowable deflection ratings.

(B) For steel tanks and other underground UST system components which are equipped with factory-installed or field-installed cathodic corrosion protection systems, the cathodic protection systems shall be tested for operability and adequacy of protection by a qualified corrosion technician or qualified corrosion specialist after the UST system installation is completed but prior to placing the system into operation.

*(i)* If the test indicates that the cathodic protection system is inoperable or inadequate, a qualified corrosion specialist shall review the test results and thoroughly inspect the UST system to ascertain the extent of corrosion protection.

*(ii)* If the qualified corrosion specialist determines that the UST system component is no longer adequately protected from corrosion, then the owner or operator shall assure that one or more of the following procedures are completed before the UST system is placed into operation.

*(I)* Appropriate repairs or modifications shall be made to restore the cathodic corrosion protection to the applicable UST system components.

*(II)* The cathodic protection system shall be replaced with another operable cathodic protection system which will provide adequate corrosion protection to the applicable UST system components, in accordance with the requirements in §334.49(c)(2) of this title (relating to Corrosion Protection).

(e) Installation of cathodic protection systems. The installation of any field-installed cathodic protection system in a new or existing UST system shall be in accordance with the applicable requirements of §334.49(c)(2) of this title.

(f) Installation of secondary containment systems.

(1) Secondary containment. Any secondary containment system shall meet the technical standards of §334.45(d) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(2) Installation of double-wall tanks.

(A) The installation of double-wall tanks shall be in compliance with the manufacturer's specifications and the applicable tank installation procedures in this section.

(B) Air testing for double-wall tanks shall be in accordance with the manufacturer's specifications or the following procedures.

*(i)* The primary tank shall be pressurized and gauged with three to five psig of air pressure. The primary tank shall be pressurized for at least one hour, and the gauge pressure shall be periodically monitored for any pressure drops.

*(ii)* After disconnecting the outside air pressure source, the interstitial area between the tank walls shall be pressurized with air pressure from the primary tank. A second gauge shall be used to measure the pressure in the interstitial space.

*(iii)* The exterior of the tank shall be soaped, and the integrity of the system shall be inspected by monitoring the gauges and inspecting for air bubbles for at least one hour prior to releasing the pressure.

*(iv)* Gauges used in air testing procedures shall have a maximum range not exceeding 15 psig. All tanks undergoing air testing shall be equipped with a pressure relief device capable of relieving the total output of the compressed air source at a pressure of not more than six psig.

(3) Installation of double-wall piping.

(A) The installation of double-wall piping shall be in compliance with the manufacturer's specifications and the applicable piping installation procedures in this section.

(B) After successful air testing of the completed primary piping system (in accordance with subsection (d)(2) of this section), the secondary containment piping shall be air tested in accordance with the manufacturer's specifications and the following procedures.

*(i)* The secondary containment piping shall be pressurized and gauged with three to five psig of air pressure.

*(ii)* The exterior of the secondary containment piping shall be soaped and the integrity of the system shall be inspected by monitoring for air bubbles for at least one hour.

*(iii)* The secondary containment piping system shall remain pressurized, and the gauges shall be periodically monitored for pressure losses, until the entire UST system installation is complete in order to monitor for damages during the remaining construction activities.

(4) Installation of external liners.

(A) External liners shall be installed in accordance with the manufacturer's specifications, and in accordance with the requirements in this paragraph.

(B) The installation, field-seaming, and field-repair of any liners shall be performed only by qualified personnel who have been properly trained and certified by the liner manufacturer.

(C) The liner shall be protected from puncture, abrasion, or any other damage during placement and during installation of other UST system components. A protective layer of puncture-resistant filter fabric shall be required when the liner is placed in an excavation area where the presence of sharp paving, rocks, or other debris presents a threat to the liner integrity.

(D) The liner shall be installed in a manner that will allow sufficient enclosure of the secondarily protected component to prevent lateral and vertical migration of any collected regulated substances.

(E) For UST systems which are equipped with cathodic protection equipment, the liner shall be installed so as not to jeopardize or inhibit the proper operation of such cathodic protection equipment.

(F) The liner installation shall include the provision of an appropriate number of recessed collection/detection points, and all portions of the liner shall be sloped toward such points to permit the detection of any releases from the primary storage component.

(G) The installation of the liner shall be performed in a manner that will ensure that groundwater, soil moisture, and stormwater runoff will not adversely affect the liner's ability to collect and contain regulated substances or the ability of the selected release detection methods to operate effectively.

(H) The liner shall be designed and installed to ensure that it will always be situated above the highest groundwater level and outside the 25-year floodplain [~~flood plain~~], unless the liner and the release detection system are properly designed for use under such conditions. The owner or operator may be required to provide documentation of the methods used to determine groundwater and floodplain information.

(I) After completion of the liner installation, but prior to placing the UST system into service, the liner shall be properly tested in accordance with the manufacturer's specifications.

(g) Installation of monitoring wells and observation wells. All monitoring wells and observation wells installed in conjunction with a UST system on or after September 29, 1989, [~~the effective date of this subchapter~~] shall be constructed and installed in accordance with the requirements of this subsection.

(1) General requirements for both monitoring wells and observation wells.

(A) All monitoring wells and observation wells shall be constructed or installed by personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the construction or installation in accordance with recognized industry standards and the requirements of this subsection.

(B) Except for observation wells installed under §334.45(e)(4)(B) of this title, the determination of the appropriate number and the appropriate diameters of monitoring wells or observation wells shall be based on the planned purpose of such well and on the specific procedures, methods, and equipment to be utilized in achieving such purpose.

(C) The slotted or screened portion of the monitoring well or observation well casing shall be designed and sized so as to prevent the migration of natural soils, backfill material, or filter pack material into the well, and to allow the unrestricted entry of any released regulated substances (liquid-phase or vapor-phase, as applicable) into the well at all times, regardless of the groundwater levels.

(D) The well casing material shall be sufficiently compatible with the stored regulated substance such that prolonged exposure to such substances will not cause failure or excessive deterioration of the casing.

(E) When installed or constructed for the purposes of compliance with one or more of the release detection methods in §334.50(d) of this title, the specific number and positioning of the monitoring wells and/or observation wells shall be based on the results of an assessment of the underground areas within and immediately surrounding the UST system excavation zone to assure compliance with the specific criteria and requirements for the applicable release detection method. Such assessment shall be performed by qualified personnel who are familiar with the characteristics of the stored regulated substance and the groundwater, soil, and geologic conditions at the site.

(F) All monitoring wells and observation wells shall be equipped with a properly designed and properly installed bottom cap.

(G) All monitoring well and observation well installations shall include an appropriate access vault or manhole, which shall be equipped with a liquid-tight cover and be designed to divert surface runoff away from the well.

(H) All monitoring wells and observation wells shall be properly capped, labeled, and secured (or locked) to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized substances.

(2) Additional requirements for monitoring wells. In addition to the general requirements of paragraph (1) of this subsection, all monitoring wells installed in conjunction with a UST system shall be constructed or installed in accordance with the applicable requirements of 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), and Texas Occupations Code, Chapter 1901 [~~Water Code (TWC), Chapter 32~~] (relating to Water Well Drillers). Any person constructing or installing a monitoring well shall be appropriately licensed as required therein.

(3) Additional requirements for observation wells. In addition to the general requirements of paragraph (1) of this subsection, the following requirements shall be applicable to all observation wells installed in conjunction with a UST system.

(A) All observation wells that are regulated as monitoring wells by the Texas Department of Licensing and Regulation (TDLR) [~~Water Well Drillers Board~~] shall be constructed or installed in accordance with the applicable requirements in 16 TAC Chapter 76, and Texas Occupations Code, Chapter 1901 [~~TWC, Chapter 32~~]. Any person constructing or installing such well shall be appropriately licensed as required therein.

(B) All observation wells that are not regulated as monitoring wells by the TDLR [~~Water Well Drillers Board~~] shall be constructed or installed in accordance with the following minimum requirements.

*(i)* All observation wells shall be designed and installed in general accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

*(ii)* All observation wells shall be constructed or installed within the UST system excavation zone, and shall be completed to a depth of at least two feet below the lowest part of any monitored tank, or at least one foot below the lowest part of any monitored piping, as applicable.

*(iii)* For observation wells installed or constructed on or after September 29, 1989, [~~the effective date of this subchapter~~] in a new or existing UST system where the backfill consists of specialized or select materials (i.e., sand, pea gravel, or crushed rock), the following minimum requirements shall be applicable.

*(I)* The access vault or manhole shall be properly installed in a concrete encasement which shall extend from the top of the vault to at least one foot below the base of the vault to provide adequate structural support and to prevent surface runoff and pollutants from entering the well.

*(II)* Beginning at the bottom of the concrete encasement beneath the access vault, the well casing shall be properly sealed with impervious bentonite or a similar impervious material for a minimum distance of either one foot below the bottom of the concrete encasement or to the top of the specialized or select backfill material, whichever is the greater depth.

*(iv)* For observation wells installed or constructed on or after September 29, 1989, [~~the effective date of this subchapter~~] in an existing UST system where the backfill consists of materials other than specialized or select materials (e.g., native soils), the well shall be constructed or installed in accordance with the applicable standards in 16 TAC Chapter 76. If the observation well is not regulated as a monitoring well by the TDLR [~~Water Well Drillers Board~~], the licensing requirements for persons constructing or installing such well shall not be applicable.

(h) Certification of installation.

(1) All owners and operators of new UST systems installed on or after September 29, 1989, [~~the effective date of this subchapter~~] shall ensure that the installation was completed in accordance with the provisions of this section, and that the UST system installation is conducted by an installer licensed by the agency [~~following certification criteria applicable to the installation are met~~].

[~~(A) For all UST system installations commencing on or after the effective date of this subchapter but before February 1, 1990, the owner or operator shall assure that at least one of the following criteria is met:~~]

[~~*(i)* the installer of the UST system has been properly certified by the tank, piping, and equipment manufacturers;~~]

[~~*(ii)* the installation has been inspected and certified by a licensed professional engineer with appropriate training and experience in UST system installation procedures;~~]

[~~*(iii)* all construction and installation activities listed in the equipment manufacturers' checklists have been properly completed; or~~]

[~~*(iv)* the installation activities have been reviewed and determined by the agency to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i) - (iii) of this subparagraph. Any alternative methods must be submitted and approved in accordance with the procedures in §334.43 of this title.~~]

[~~(B) For all UST system installations commencing on or after February 1, 1990, the owner or operator shall assure that the UST system installation is conducted by an installer licensed by the agency.~~]

(2) The installer of the UST system shall complete the installation certification section of the agency's authorized form, and shall certify by signature that the installation methods are in compliance with the provisions of this section, as required by §334.8(a) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems).

(i) Installation records.

(1) Owners and operators shall maintain all installation records required in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain the following records for the operational life of the UST system:

(A) general information relating to the installation activity, including:

*(i)* date of installation activity;

*(ii)* names, addresses, and telephone numbers of the persons conducting the installation and performing any associated inspections or testing; and

*(iii)* copies of all related notifications or reports filed with the agency or others, including:

*(I)* registration information, as required by §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems); and

*(II)* installation certification information, as required by §334.8(a) of this title;

(B) as-built drawings (or plans), which have been drawn to scale and in sufficient detail to accurately depict and describe the sizes, dimensions, and locations of the following:

*(i)* all pertinent site features, including property boundaries, street and road rights-of-way, easements, utility lines, buildings and other structures, driveways, slabs, and any natural features;

*(ii)* all pertinent UST system components, including tanks, piping, vent piping, pumps, dispensers, excavation zone (including tank hole and piping trench), monitoring wells, spill and overfill prevention equipment, release detection system components (including monitoring and testing locations), cathodic protection system components (including test stations), secondary containment systems, anchoring systems, and any other pertinent UST system components; and

*(iii)* any site features or UST system components which have been added, revised, changed, modified, or removed subsequent to the preparation of the original drawings or plans; and

(C) equipment information for all UST system components including:

*(i)* manufacturer's [~~manufacturers~~'] specifications, installation instructions, operating instruction, warranty information, recommended test procedures, and inspection and maintenance schedules; and

*(ii)* names, addresses, and telephone numbers of the manufacturer's [~~manufacturers~~'] representatives and local authorized service technicians.

(3) Owners and operators shall maintain the results of all equipment tests, including the air tests and the tightness tests conducted on the tanks and piping at the time of installation, for at least five years after the date of installation.

*§334.47. Technical Standards for Existing Underground Storage Tank Systems.*

(a) General requirements.

(1) Alternatives for existing underground storage tank (UST) systems. No later than the implementation dates specified in §334.44(b) of this title (relating to Implementation Schedules), all applicable components of any existing UST system (i.e., UST system for which installation has commenced or has been completed on or prior to December 22, 1988) shall be either installed, upgraded, improved, or replaced with equipment or components which meet or exceed either of the following requirements:

(A) the requirements for technical standards and installation of new UST systems in §334.45 of this title (relating to Technical Standards for New Underground Storage Tank [~~UST~~] Systems) and in §334.46 of this title (relating to Installation Standards for New Underground Storage Tank [~~UST~~] Systems); [~~or~~]

(B) the minimum upgrading requirements for existing UST systems in subsection (b) of this section; or [~~.~~]

(C) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages."

(2) If any applicable component of an existing UST system is not brought into timely compliance with the requirements of paragraph (1) of this subsection, the UST system shall be permanently removed from service no later than 60 days after the prescribed implementation date. The permanent removal from service shall be conducted in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from [~~From~~] Service).

(b) Minimum upgrading requirements for all existing UST systems.

(1) Tank integrity assessment and UST system cathodic protection. No later than December 22, 1998, all tanks in an existing UST system shall be assessed for structural integrity, and all underground metallic components of an existing UST system shall be equipped with a cathodic protection system, as provided in the following subparagraphs.

(A) Tank integrity assessment. The tank shall be assessed for structural integrity and for the presence of corrosion holes by one or more of the following methods.

*(i)* The tank may be equipped with one or more of the release detection systems meeting the applicable requirements of §334.50(d)(4) - (10) of this title (relating to Release Detection). Such release detection system(s) shall have been in operation for at least 60 days prior to the date of the cathodic protection system installation, and at least one of the systems shall remain in operation for the remaining operational life of the tank.

*(ii)* The tank may be tested by conducting at least two tank tightness tests meeting the requirements of §334.50(d)(1)(A) of this title. The first tightness test shall be conducted prior to installing the cathodic protection system, and the second test shall be conducted between three and six months after the cathodic protection system is placed into operation. For tanks constructed of non-corrodible [~~noncorrodible~~] material, or metal tanks clad or jacketed with non-corrodible [~~noncorrodible~~] material which are electrically isolated from surrounding soil, backfill or groundwater or any other water, the tank may be tested by conducting at least one tightness test meeting the requirements of §334.50(d)(1)(A) of this title, within the 12-month [~~12 month~~] period prior to December 22, 1998.

*(iii)* When the tank upgrading is to include the installation of an interior lining meeting the applicable provisions in §334.52(b) of this title (relating to Underground Storage Tank [~~UST~~] System Repairs and Relining), a site assessment or release determination may be conducted prior to the installation of the interior lining and the cathodic protection system. Such site assessment or release determination shall be conducted in accordance with the provisions of §334.55(e) of this title.

*(iv)* Prior to the installation of the cathodic protection system, the tank may be internally inspected and assessed to assure that the tank is structurally sound and free of corrosion holes, provided that such internal inspection shall be:

*(I)* conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

*(II)* performed by qualified personnel possessing the requisite training, experience, and competence to assure that any corrosion holes or structurally unsound areas are located.

*(v)* Prior to the installation of the cathodic protection system, the tank may be assessed for structural integrity and the presence of corrosion holes by an alternate method which has been reviewed and determined by the agency to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i) - (iv) of this subparagraph, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Repairs or corrective action. If the results of the tank integrity assessment (required by subparagraph (A) of this paragraph) indicate that the existing tank is not structurally sound and/or that a release of regulated substances has occurred, then the owner and operator shall:

*(i)* comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action); and

*(ii)* conduct one of the following activities, as applicable:

*(I)* perform appropriate repairs or relining of the tank, in accordance with the applicable requirements of §334.52 of this title, as necessary to restore the structural integrity of the tank; or

*(II)* permanently remove the tank from service in accordance with the applicable provisions in §334.55 of this title.

(C) Field-installed cathodic protection system. After confirmation or restoration of the structural integrity of the tank, all underground metal components of the UST system, which are not isolated from the surrounding soil, backfill, and groundwater or any other water, and which either do or could convey, contain, or store regulated substances, shall be equipped with a field-installed cathodic protection system meeting the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

(2) Adding spill and overfill prevention equipment. All [~~No later than December 22, 1994, all~~] existing USTs shall be equipped with appropriate spill and overfill prevention equipment, in accordance with the provisions in §334.51(b) of this title (relating to Spill and Overfill Prevention and Control).

(3) Adding release detection for UST system piping.

(A) Release detection for pressurized piping. No later than December 22, 1990, all piping in an existing UST system that routinely conveys regulated substances under pressure (i.e., which operates at greater than atmospheric pressure) shall be brought into compliance with the pressurized piping release detection requirements in §334.50(b)(2)(A) of this title.

(B) Release detection for suction piping and gravity-flow piping. All piping in an existing UST system that routinely conveys regulated substances either under suction (i.e., which operates at less than atmospheric pressure) or by gravity-flow shall be brought into compliance with the applicable release detection requirements in §334.50(b)(2)(B) of this title no later than the date on which release detection is required for the tank to which such piping is connected, as prescribed in paragraph (4) of this subsection.

(4) Adding release detection for tanks.

(A) Except as provided in subparagraph (B) of this paragraph, all tanks at an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title no later than the date specified in the following clauses for the time of installation applicable to such tanks:

*(i)* December 22, 1989, for tanks where the installation dates are undetermined or unknown;

*(ii)* December 22, 1989, for tanks installed during 1964 or prior years;

*(iii)* December 22, 1990, for tanks installed during the years 1965 - 1969, inclusive;

*(iv)* December 22, 1991, for tanks installed during the years 1970 - 1974, inclusive;

*(v)* December 22, 1992, for tanks installed during the years 1975 - 1979, inclusive;

*(vi)* December 22, 1993, for tanks installed during the years 1980 - 1987, inclusive; and

*(vii)* December 22, 1993, for tanks installed between January 1, 1988, and December 22, 1988, inclusive.

(B) For emergency generator tanks only, the compliance dates prescribed in subparagraph (A)(i) - (v) of this paragraph shall be extended by one year; however, no compliance date shall be extended past December 22, 1993.

(C) When two or more existing tanks are located in a common tank hole, and when the selected method of release detection is either vapor monitoring or groundwater monitoring in accordance with §334.50(d)(5) and (6) of this title, then all such tanks shall be brought into compliance with the applicable release detection requirements of this paragraph no later than the date specified for the oldest tank in such common tank hole.

(c) Additional upgrading requirements for existing hazardous substance UST systems. In addition to the upgrading requirements applicable to all existing UST systems in subsections (a) and (b) of this section, all existing hazardous substance UST systems (e.g., UST system for which installation has commenced or has been completed on or prior to December 22, 1988) shall be equipped or retrofitted with a secondary containment system and an associated release detection system in accordance with the following provisions.

(1) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a secondary containment system meeting the design, construction, and installation requirements in §334.45(d) of this title and §334.46(f) of this title.

(2) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a release detection system capable of monitoring either the interstitial spaces between the primary and secondary walls of any double-walled UST component, or the spaces between the primary UST component walls and any external liners, as applicable, in accordance with the provisions in §334.50(c) of this title.

(d) A [~~An~~] UST system, at a minimum, shall incorporate secondary containment as specified in Texas Water Code, §26.3476, if the UST system is located in an area described in that provision.

(e) Records for upgrading of existing UST systems.

(1) Owners and operators shall maintain all records related to the upgrading of existing UST systems required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain the following records for the operational life of the UST system:

(A) general information related to the tank integrity assessment and cathodic protection requirements in subsection (b) of this section, including:

*(i)* dates of the tank integrity assessment and cathodic protection installation activities;

*(ii)* names, addresses, and telephone numbers of the persons conducting the tank integrity assessment and cathodic protection installation activities; and

*(iii)* copies of all related notifications or reports filed with the agency or others, including:

*(I)* registration information, as required by §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems); and

*(II)* installation certification information, as required by §334.8(a) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems);

(B) as-built drawings (or plans), which have been drawn to scale and in sufficient detail so as to accurately depict and describe the sizes, dimensions, and locations of any UST system components or equipment added or installed on or after September 29, 1989, [~~the effective date of this subchapter~~] which are installed pursuant to one of the construction activities included in §334.6(b)(1)(A) of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems); and

(C) equipment information for any UST system components or equipment added or installed on or after September 29, 1989, [~~the effective date of this subchapter~~] for the purpose of compliance with the upgrading requirements of this section, including manufacturer's [~~manufacturers~~] specifications, installation instructions, operating instructions, warranty information, recommended test procedures, and inspection and maintenance schedules.

(3) Owners and operators shall maintain the results of all equipment tests and tank integrity tests required in this section including internal inspections, tank and piping tightness tests, and site assessments, for at least five years after the dates such tests are conducted.

*§334.48. General Operating and Management Requirements.*

(a) Prevention of releases. All owners and operators of underground storage tank (UST) systems shall ensure that the systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems.

(b) UST system management. UST systems shall be operated, maintained, and managed in accordance with accepted industry practices.

(c) Inventory control. On or after September 29, 1989 [~~the effective date of this subchapter~~], regardless of which method of release detection is used for compliance with §334.50 of this title (relating to Release Detection), effective manual or automatic inventory control procedures shall be conducted for all UST systems at retail service stations as defined in §334.2 of this title (relating to Definitions). Such inventory control procedures shall be in accordance with §334.50(d)(1)(B) of this title. Complete and accurate inventory records shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping).

(d) Spill and overfill control. All owners and operators shall ensure that spills and overfills of regulated substances do not occur and that all spill and overfill prevention equipment is properly operated and maintained in accordance with §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(e) Operational requirements for release detection equipment. Owners and operators of all new and existing UST systems shall ensure that all release detection equipment installed as part of a UST system pursuant to §334.50 of this title is maintained in good operating condition and electronic and mechanical components are tested for proper operation in accordance with one of the following: manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or requirements determined by the executive director to be no less protective of human health and the environment than listed in this subsection [~~The owner or operator shall also assure that such equipment is routinely inspected and serviced in accordance with the manufacturer's specifications and in a manner that will assure the proper performance, operability, and running condition of the equipment. Where periodic testing and/or monitoring activities are required as part of a specific release detection method under §334.50 of this title, such tests and/or monitoring activities shall be performed at the prescribed times and/or frequencies~~].

(1) Beginning on January 1, 2021, a test of the proper operation of release detection equipment must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

(A) automatic tank gauge and other controllers: test alarm, verify system configuration, and test battery backup;

(B) probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged; ensure cables are free of kinks and breaks, and test alarm operability and communication with controller;

(C) automatic line leak detector: test operation to meet criteria in §334.50(b)(2)(A)(i) of this title by simulating a leak;

(D) vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

(E) hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

(2) The code of practice that may be used to comply with paragraph (1) of this subsection is: Petroleum Equipment Institute (PEI) Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(f) Operation requirements for corrosion protection systems. All owners and operators of UST systems shall ensure [~~assure~~] that all required UST system components are continuously protected from corrosion, and that all corrosion protection systems are inspected and tested, in accordance with the applicable provisions of §334.49 of this title (relating to Corrosion Protection).

(g) Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

(1) Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the

equipment is operating properly and will prevent releases to the environment:

(A) Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

*(i)* The equipment is double-walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in subsection (h) of this section. Owners and operators must begin meeting the requirements in clause (ii) of this subparagraph and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

*(ii)* The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

*(I)* requirements developed by the manufacturer;

*(II)* code of practice developed by a nationally recognized association or independent testing laboratory; or

*(III)* low liquid level test method - the sump may be tested by filling the sump with liquid to a level that is three inches higher than the activation point of the sensor provided the following conditions are met:

(-a-) the sensor is mounted and maintained at the lowest point of the sump in accordance with the requirements in §334.45(d)(1)(E)(vi) of this title (relating to Technical Standards for New Underground Storage Tank Systems);

(-b-) the sensor is annually tested for functionality in accordance with the requirements in subsection (e)(1)(B) of this section;

(-c-) the sensor is calibrated to activate a positive shutdown of:

(-1-) the individual dispenser associated with that sump; or

(-2-) submersible turbine pump associated with that sump; and

(-d-) all on-site operators are trained to immediately notify the appropriate A or B level operator of the shutdown; or

*(IV)* requirements determined by the executive director to be no less protective of human health and the environment than the requirements listed in subclauses (I) - (III) of this clause.

*(iii)* Liquids that are used for testing as described in clause (ii) of this subparagraph may be reused for further liquid testing in other sumps, either at the same facility or at other facilities. The discharge must be made in compliance with the applicable wastewater discharge requirements or be disposed of in accordance with Chapter 330 or 335 of this title (relating to Municipal Solid Waste and Industrial Solid Waste and Municipal Hazardous Waste).

(B) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in §334.51(b)(2)(C) of this title and will activate when a regulated substance reaches that level.

(C) Codes of practice. The following code of practice may be used to comply with subparagraphs (A)(ii)(II) and (B) of this paragraph: PEI Publication RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities."

(2) Implementation dates. Owners and operators shall meet these requirements:

(A) UST systems in use on or before the September 1, 2018:

*(i)* The requirements listed in paragraph (1) of this subsection shall apply on January 1, 2021.

*(ii)* Initial spill prevention equipment and containment sump testing, and overfill prevention inspections (relating to the requirements in paragraph (1) of this subsection) shall be conducted by January 1, 2021.

(B) UST systems brought into use after September 1, 2018.

*(i)* The requirements listed in paragraph (1) of this subsection shall apply on the date the UST system was brought into use.

*(ii)* Initial spill prevention equipment and containment sump testing, and overfill prevention inspections shall be conducted by the date the UST system was brought into use.

(3) Owners and operators shall maintain records as follows (in accordance with §334.10(b)(2)(B) of this title) for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment.

(A) All records of testing and inspection must be maintained for five years.

(B) For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double-walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

(h) Periodic operation and maintenance walkthrough inspections. To properly operate and maintain UST systems, not later than January 1, 2021, owners and operators must meet one of the following.

(1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified in the following subparagraphs.

(A) Every 30 days (exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery).

*(i)* Spill prevention equipment. Visually check for damage; remove any liquid or debris found within 96 hours and properly dispose of the liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double-walled spill prevention equipment with interstitial monitoring, check for leaks in the interstitial area.

*(ii)* Release detection equipment. Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or the unexplained presence of water in the tank) and ensure records of release detection testing are reviewed and current.

(B) Annually.

*(i)* Any containment sump installed on or after January 1, 2009, and any containment sump used for interstitial moni-

toring. Visually check for damage, leaks to the containment area, or releases to the environment; remove liquid or debris found in the containment sump within 96 hours of discovery and properly dispose of the liquid or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area.

*(ii)* Containment sumps installed before January 1, 2009, and are not used for interstitial monitoring of piping. Visually check for damage to equipment within the sump, visually check for regulated substance releases in the containment sump and to the environment, visually check for the presence of cathodic protection if the sump contains water that is in contact with metal components that routinely contain product, and remove any debris.

*(iii)* Submersible turbine pump and under dispenser areas that do not have containment sumps. Visually check for damage to the equipment within the area, visually check for regulated substance releases to the environment, visually check for the presence of cathodic protection if any metal components that routinely contain product are in contact with soil or water, and remove any debris.

*(iv)* Hand held release detection equipment. Check devices, such as tank gauge sticks or groundwater bailers, for operability and serviceability.

(2) Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment in the same manner and frequency as requirements in paragraph (1) of this subsection. The following code of practice may be used to comply with this subsection: PEI Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems."

(i) Airport hydrant systems. In addition to the periodic walkthrough inspection requirements in subsection (h) of this section, owners and operators must inspect the following areas at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 Code of Federal Regulations §1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection in accordance with §334.10(b) of this title.

(1) Hydrant pits. Visually check for any damage, remove any liquid or debris, and check for any leaks; and

(2) Hydrant piping vaults. Check for any hydrant piping leaks.

(j) [~~(g)~~] Operation and maintenance records. Owners and operators shall maintain records relating to the operation and maintenance of a UST system (including records related to inspection, servicing, testing, and inventory control) as prescribed in this section for at least five years, and such records shall be maintained in accordance with §334.10(b) of this title. Inspection records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

*§334.49. Corrosion Protection.*

(a) General requirements.

(1) Owners and operators of underground storage tank (UST) systems (or underground metal UST system components) which are required to be protected from corrosion shall comply with the requirements in this section to ensure that releases due to corrosion are prevented.

(2) All corrosion protection systems shall be designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system.

(3) Any alternative methods for corrosion protection or variances from the requirements of this section are prohibited, except when reviewed and approved by the agency pursuant to procedures for variances found in §334.43 of this title (relating to Variances and Alternative Procedures).

(4) Corrosion protection in accordance with the provisions of this section shall be provided to all underground and/or totally or partially submerged metal components of any existing or new UST system which are designed or used to convey, contain, or store regulated substances, including, but not limited to, the tanks, piping (including valves, fittings, flexible connectors, swing joints, and impact/shear valves), and also to other underground metal components associated with a [~~an~~] UST system, including but not limited to, secondary containment devices, manways, manholes, fill pipes, vent lines, submersible pump housings, spill containers, and riser pipes.

(5) For internal corrosion protection, the interior bottom surface of new metal tanks installed on or after September 29, 1989, shall be fitted with a striker plate under all fill, gauge, and monitoring openings.

(6) When provisions of this subsection require compliance with a specific code or standard of practice developed by a nationally recognized association or independent testing laboratory, the most recent version of the referenced code in effect at the time of the regulated UST activity shall be applicable.

(7) For a [~~an~~] UST system to be placed temporarily out of service, the owner or operator must comply with the requirements of §334.54(c) of this title (relating to Temporary Removal from Service).

(b) Allowable corrosion protection methods. All components of a [~~an~~] UST system which are designed to convey, contain, or store regulated substances shall be protected from corrosion by one or more of the following methods.

(1) The component may be constructed of a noncorrodible material which is compatible with the stored regulated substance(s).

(2) The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components by installing the component in an open area (e.g., manway, sump, vault, pit, etc.) where periodic visual inspection of all parts of the component for the presence of corrosion or released substances is practicable.

(3) The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, groundwater or any other water, and from other metallic components by completely enclosing the component in a secondary containment device (e.g., wall, jacket, or liner), provided that:

(A) the secondary containment device is designed and installed in accordance with the applicable technical and installation standards in §334.45(d) of this title (relating to Technical Standards for New Underground Storage Tank Systems) and §334.46(f) of this title (relating to Installation Standards for New Underground Storage Tank Systems), and in accordance with an applicable code or standard of practice developed by a nationally recognized association or independent testing laboratory, and is either:

*(i)* constructed of a noncorrodible material which is compatible with the stored regulated substance;

*(ii)* electrically isolated from the protected component and other metallic components; or

*(iii)* cathodically protected by either a factory-installed or field-installed cathodic protection system meeting the applicable requirements of subsection (c) of this section; and

(B) the interstitial space between the protected component and the secondary containment device shall be free of any soil, backfill material, groundwater or any other water, or other substances, and the protected component shall be regularly inspected and tested for electrical isolation in accordance with the provisions in subsection (d)(1) of this section.

(4) Tanks (only) may be factory-constructed either as a steel/fiberglass-reinforced plastic composite tank, or as a steel tank with a bonded fiberglass-reinforced plastic external cladding or laminate, or as a steel tank with a bonded fiberglass reinforced polyurethane coating, as a steel tank with a bonded polyurethane external coating, or as a steel tank completely contained within a nonmetallic external tank jacket in accordance with the requirements in §334.45(b)(1)(D), (E), or (F) of this title, as applicable.

(5) The component may be coated with a suitable dielectric material, equipped with appropriate dielectric fittings for electrical isolation, and equipped with either:

(A) a factory-installed cathodic protection system meeting the requirements of subsection (c)(1) of this section; or

(B) a field-installed cathodic protection system meeting the requirements of subsection (c)(2) of this section.

(6) Except for the tanks and the piping system components, other underground components of a UST system (including vent lines, fill risers, spill containment vessels, and tank fittings (e.g., bunghole plugs)) which do not routinely contain regulated substances may be protected from corrosion by thorough coating or wrapping with a suitable dielectric material which is compatible with the stored regulated substance without the need for the use of other corrosion protection methods.

(7) Corrosion protection in accordance with the requirements of this subchapter is not required if it is determined by a corrosion specialist that corrosion protection of an underground metal UST system or UST system component is unnecessary because the site is not corrosive enough to cause a release due to corrosion for the operational life of the UST system. The upgrade or repair of an existing corrosion protection system for an underground metal UST system or UST system component is not required if it is determined by a corrosion specialist that said upgrading or repair is unnecessary and that the protection provided by the existing corrosion protection system is sufficient to prevent a release due to corrosion for the operational life of the UST system. In either case, the determination of the corrosion specialist must be made in writing, must be signed by the corrosion specialist (corrosion specialist must also seal the written determination if he or she is a qualified duly licensed professional engineer in Texas), and must be maintained by the owner and operator as part of the records for the facility in keeping with the requirements of subsection (e) of this section and §334.10(b) of this title (relating to Reporting and Recordkeeping).

(c) Cathodic protection systems.

(1) Factory-installed cathodic protection systems.

(A) A factory-installed cathodic protection system on any UST component shall be designed, fabricated, installed, operated, and maintained in accordance with applicable codes or standards of practice developed for such cathodic protection method by a nationally recognized association or independent testing laboratory.

(B) At a minimum, the factory-installed cathodic protection system shall include the following components:

*(i)* a suitable dielectric external coating or laminate, which shall thoroughly cover all exterior surfaces exposed to the soil, backfill, or groundwater or any other water, and which shall consist of materials which are compatible with the stored regulated substances;

*(ii)* dielectric isolation bushings, connections, or fittings, which shall be installed at all locations where the protected component connects to other metallic system components, and which shall be constructed of materials which are compatible with the stored regulated substances; and

*(iii)* sacrificial anodes which are firmly attached and electrically connected to the protected components and which are positioned and sized to provide complete cathodic protection for all parts of the protected component.

(2) Field-installed cathodic protection systems.

(A) A field-installed cathodic protection system on any UST system component shall be designed by a qualified corrosion specialist, and shall be designed, installed, operated, and maintained in accordance with applicable codes or standards of practice developed for such cathodic protection systems by a nationally recognized association or independent testing laboratory.

(B) Impressed current cathodic protection systems shall be designed and equipped with appropriate equipment or devices capable of indicating the operational status of the system at all times.

(C) In addition to the standard inspection and testing requirements for all cathodic protection systems required in paragraph (4) of this subsection, all impressed current cathodic protection systems shall be regularly inspected by the owner or operator (or the owner's designated representative) to ensure that the rectifier and other system components are operating properly. Such inspections shall be performed at least once every 60 days.

(3) Test stations and connections. To allow for the periodic testing required in paragraph (4) of this subsection, any factory-installed or field-installed cathodic protection system shall include appropriate connections, insulated lead wires, and accessible test stations. All lead wires connected to the tanks, anodes, reference electrodes, and other components associated with the cathodic protection system shall terminate at one or more test stations. The termination of each lead wire at a test station shall be clearly labeled or coded to properly identify the specific component to which it is connected.

(4) Inspection and testing requirements for all cathodic protection systems.

(A) Except as provided in subsection (d)(2) of this section, all cathodic protection systems which are used to provide corrosion protection for any component of a UST system shall be inspected and tested to determine the adequacy of the cathodic protection by a qualified corrosion specialist or corrosion technician in accordance with the requirements in this paragraph.

(B) The inspection and testing criteria used to determine the adequacy of the cathodic protection shall be in accordance with a code or standard of practice developed by a nationally recognized corrosion association or independent testing laboratory, such as:[.]

*(i)* NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection

of Underground Storage Tank Systems or Submerged Metallic Tank Systems;"

*(ii)* NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems;"

*(iii)* Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for sti-P3 USTs;"

*(iv)* NACE International Standard Practice SP 0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection;" or

*(v)* NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."

(C) All cathodic protection systems shall be inspected and tested for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years.

(d) Requirements for other corrosion protection methods.

(1) Electrically isolated components.

(A) Except for jacketed tanks meeting the requirements of §334.45(b)(1)(F) of this title, any metal component of a [~~an~~] UST system which is protected from corrosion by one of the electrical isolation methods described in subsection (b)(2) and (3) of this section, and which is not equipped with a cathodic protection system, shall be periodically inspected and tested to ensure that the metal component remains electrically isolated from the surrounding soil, backfill, groundwater or any other water, and from other metal components in accordance with one or more of the following procedures.

*(i)* When visual inspection is possible, the entire exterior surface of such component may be thoroughly inspected visually by qualified personnel for the presence of corrosion or released regulated substances.

*(ii)* If visual inspection is not possible, the component may be inspected and tested by a qualified corrosion technician or by a qualified corrosion specialist by taking structure to soil voltage readings in accordance with procedures established by a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

*(iii)* The component may be inspected and/or tested by an alternative method which has been reviewed and determined by the agency to ascertain electrical isolation and to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and safety and the environment than the methods described in clauses (i) and (ii) of this subparagraph, in accordance with the procedures in §334.43 of this title.

(B) The inspections and tests required in subparagraph (A) of this paragraph shall be conducted within three to six months after installation of the metal component, and then once every three years thereafter for the remaining operational life of the UST system.

(C) If the tests required in subparagraph (A) of this paragraph indicate that the metal component is no longer electrically isolated from the surrounding soil, backfill, groundwater or any other water, or from other metal components, a qualified corrosion specialist shall review the test results and thoroughly inspect the area of the metal component to ascertain the extent of electrical isolation and corrosion protection for the component.

(D) If the qualified corrosion specialist determines that the metal component is no longer adequately protected from corrosion, the owner or operator shall assure that one or more of the following procedures are completed within 60 days of the date of such determination:

*(i)* appropriate repairs or modifications shall be made to restore the electrical isolation of the protected component; or

*(ii)* a field-installed cathodic protection system meeting the requirements of subsection (c)(2) of this section shall be installed.

(2) Dual-protected tanks. If a steel/fiberglass-reinforced plastic composite tank, a steel tank with a bonded fiberglass-reinforced plastic external cladding or laminate, a steel tank with a bonded fiberglass reinforced polyurethane coating, or a steel tank with a bonded polyurethane coating is also equipped with a factory-installed cathodic protection system, then the normal inspection and testing requirements for cathodic protection systems in subsection (c)(4) of this section may be waived. This paragraph shall be applicable only to tanks meeting the design and construction requirements in §334.45(b)(1)(D) or (E) of this title, as applicable, and when such tanks are fitted with factory-installed cathodic protection systems meeting the requirements of subsection (c)(1) of this section.

(e) Corrosion protection records.

(1) Owners and operators shall maintain all corrosion protection records required in this subsection in accordance with the requirements in §334.10(b) of this title.

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the corrosion protection requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the corrosion protection system, as listed in §334.46(i) of this title, shall be maintained for as long as the corrosion protection system is used, including:

*(i)* the name, address, telephone number, and corrosion protection credentials of either the company which designed the factory-installed cathodic protection system or the corrosion specialist who designed the field-installed cathodic protection system, as applicable;

*(ii)* drawings or plans depicting the locations of all cathodic protection system components, including the locations of all test stations; and

*(iii)* operating instructions and warranty information, maintenance schedules, and testing procedures for all operational components of the cathodic protection systems.

(B) The following corrosion protection records shall be maintained for at least five years after the applicable test or inspection is conducted:

*(i)* results of all tests and inspections of any impressed current cathodic protection system conducted in accordance with subsection (c)(2)(C) of this section; and

*(ii)* results of all tests and inspections of the adequacy of any cathodic protection system conducted in accordance with subsection (c)(4) of this section; and

*(iii)* results of all tests and inspections to assure corrosion protection for electrically isolated components in accordance with subsection (d)(1) of this section.

*§334.50. Release Detection.*

(a) General requirements.

(1) Owners and operators of new and existing underground storage tank (UST) systems shall provide a method, or combination of methods, of release detection which shall be:

(A) capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment;

(B) installed, calibrated, operated, maintained, utilized, and interpreted (as applicable) in accordance with the manufacturer's and/or methodology provider's specifications and instructions consistent with the other requirements of this section, and by personnel possessing the necessary experience, training, and competence to accomplish such requirements; and

(C) capable of meeting the particular performance requirements of such method (or methods) as specifically prescribed in this section, based on the performance claims by the equipment manufacturer or methodology provider/vendor, as verified by third-party evaluation conducted by a qualified independent testing organization, using applicable United States Environmental Protection Agency protocol, provided that the following additional requirements shall also be met.

*(i)* Any performance claims, together with their bases or methods of determination including the summary portion of the independent third-party evaluation, shall be obtained by the owner and/or operator from the equipment manufacturer, methodology provider, or installer and shall be in writing.

*(ii)* When any of the following release detection methods are used on or after December 22, 1990 (except for methods permanently installed and in operation prior to that date), such method shall be capable of detecting the particular release rate or quantity specified for that method such that the probability of detection shall be at least 95% and the probability of false alarm shall be no greater than 5.0%:

*(I)* tank tightness testing, as prescribed in subsection (d)(1)(A) of this section;

*(II)* automatic tank gauging, as prescribed in subsection (d)(4) of this section;

*(III)* automatic line leak detectors for piping, as prescribed in subsection (b)(2)(A)(i) of this section;

*(IV)* piping tightness testing, as prescribed in subsection (b)(2)(A)(ii)(I) of this section;

*(V)* electronic leak monitoring systems for piping, as prescribed in subsection (b)(2)(A)(ii)(III) of this section; and

*(VI)* statistical inventory reconciliation (SIR), as prescribed in subsection (d)(9) of this section.

(2) When a release detection method operated in accordance with the particular performance standards for that method indicates that a release either has or may have occurred, the owners and operators shall comply with the applicable release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(3) Owners and operators of all UST systems shall comply with the release detection requirements of this section in accordance with the applicable schedules in §334.44 of this title (relating to Implementation Schedules).

(4) As prescribed in §334.47(a)(2) of this title (relating to Technical Standards for Existing Underground Storage Tank Systems), any existing UST system that cannot be equipped or monitored with a method of release detection that meets the requirements of this section shall be permanently removed from service in accordance with the applicable procedures in §334.55 of this title (relating to Permanent Removal from Service) no later than 60 days after the implementation date for release detection as prescribed by the applicable schedules in §334.44 of this title.

(5) Any owner or operator who plans to install a release detection method for a UST system shall comply with the applicable construction notification requirements in §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems), and upon completion of the installation of such method shall also comply with the applicable registration and certification requirements of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) and §334.8 of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems).

(6) Any equipment installed or used for conducting release detection for a UST system shall be listed, approved, designed, and operated in accordance with standards developed by a nationally recognized association or independent testing laboratory (e.g., Underwriters Laboratories, Inc. [~~UL~~]) for such installation or use, as specified in §334.42(d) of this title (relating to General Standards).

(7) For a UST system to be placed temporarily out-of-service, the owner or operator must comply with the requirements of §334.54(c) of this title (relating to Temporary Removal from Service).

(b) Release detection requirements for all UST systems. Owners and operators of all UST systems shall ensure that release detection equipment or procedures are provided in accordance with the following requirements.

(1) Release detection requirements for tanks.

(A) Tanks installed prior to January 1, 2009. Except as provided in subparagraph [~~subparagraphs (B) and~~] (C) of this paragraph and in subsection (d)(9) of this section, all such tanks shall be monitored in a manner which will detect a release at a frequency of at least once every 30 days [~~month (not to exceed 35 days between each monitoring)~~] by using one or more of the release detection methods described in subsection (d)(4) - (10) of this section[~~.~~].

(B) Tanks installed on or after January 1, 2009. All such tanks shall be monitored in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring release detection method prescribed in subsection (d)(7) of this section no later than September 1, 2018.

(C) The manual tank gauging method of release detection, as described in subsection (d)(2) of this section, may be used as the sole release detection system for tanks with a nominal capacity of 1,000 gallons or fewer only.

(D) 30-day monthly tank gauging method of release detection, as described in subsection (d)(3) of this section, may be used as the sole release detection method for emergency generator tanks only.

~~[(B) A combination of tank tightness testing and inventory control in accordance with subsection (d)(1) of this section may be used as an acceptable release detection method for tanks only until December 22, 1998, and the required frequency of the tank tightness test shall be based on the following criteria.]~~

~~*[(i)* A tank tightness test shall be conducted at least once each year for any tank in an existing UST system which is not~~

being operated in violation of the upgrading or replacement schedule in §334.44(b) of this title, but has not yet been either:]

*[(I)* replaced with a UST system meeting the applicable technical and installation standards in §334.45 of this title (relating to Technical Standards for New Underground Storage Tank Systems) and §334.46 of this title (relating to Installation Standards for New Underground Storage Tank Systems); or]

*[(II)* retrofitted or equipped in accordance with the minimum upgrading requirements applicable to existing UST systems in §334.47 of this title.]

*[(ii)* A tank tightness test shall be conducted at least once every five years for any tank in a UST system which has been either:]

*[(I)* installed in accordance with the applicable technical standards for new UST systems in §334.45 and §334.46 of this title; or]

*[(II)* retrofitted or equipped in accordance with the minimum upgrading requirements applicable to existing UST systems in §334.47 of this title.]

[(C) The manual tank gauging method of release detection, as prescribed in subsection (d)(2) of this section, may be used as the sole release detection system only for a petroleum substance tank with a nominal capacity of 1,000 gallons or less. The monthly tank gauging method of release detection, as prescribed in subsection (d)(3) of this section, may be used as the sole release detection system only for emergency generator tanks.]

[(D) In addition to the requirements in subparagraphs (A) - (C) of this paragraph, any tank in a hazardous substance UST system shall also be equipped with a secondary containment system and related release detection equipment, as prescribed in subsection (e) of this section.]

(2) Release detection for piping. Piping in a UST system shall be monitored in a manner which will detect a release from any portion of the piping system, in accordance with the following requirements.

(A) Requirements for pressurized piping. UST system piping that conveys regulated substances under pressure shall be in compliance with the following requirements.

*(i)* Each separate pressurized line (except for lines utilized in airport hydrant systems) shall be equipped with an automatic line leak detector meeting the following requirements.

*(I)* The line leak detector shall be capable of detecting any release from the piping system of three gallons per hour when the piping pressure is at ten pounds per square inch.

*(II)* The line leak detector shall be capable of alerting the UST system operator of any release within one hour of occurrence either by shutting off the flow of regulated substances, or by substantially restricting the flow of regulated substances.

*(III)* The line leak detector shall be tested at least once per year for performance and operational reliability and shall be properly calibrated and maintained, in accordance with the manufacturer's specifications and recommended procedures.

*(ii)* Piping installed prior to January 1, 2009. In addition to the required line leak detector prescribed in clause (i) of this subparagraph, each pressurized line shall also be tested or monitored for releases in accordance with at least one of the following methods.

*(I)* The piping may be tested at least once per year by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory. Any such piping tightness test shall be capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure.

*(II)* Except as provided in subsection (d)(9) of this section, the piping may be monitored for releases at least once every 30 days [month (not to exceed 35 days between each monitoring)] by using one or more of the release detection methods prescribed in subsection (d)(5) - (10) of this section.

*(III)* The piping may be monitored for releases at least once every 30 days [month (not to exceed 35 days between each monitoring)] by means of an electronic leak monitoring system capable of detecting any release from the piping system of 0.2 gallons per hour at normal operating pressure.

*(iii)* Piping installed or replaced on or after January 1, 2009. In addition to the required line leak detector prescribed in clause (i) of this subparagraph, each pressurized line shall also be tested or monitored for releases at least once every 30 days by using the interstitial monitoring release detection method prescribed in subsection (d)(7) of this section no later than September 1, 2018.

(B) Requirements for suction piping and gravity flow piping.

*(i)* Piping installed prior to January 1, 2009. Except as provided in clause (iii) [(ii)] of this subparagraph, each separate line in a UST piping system that conveys regulated substances either under suction or by gravity flow shall meet at least one of the following requirements.

*(I)* Each separate line may be tested at least once every three years by means of a positive or negative pressure tightness test applicable to underground product piping and conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory. Any such piping test shall be capable of detecting any release from the piping system of 0.1 gallons per hour.

*(II)* Each line may be monitored for releases at least once every 30 days [month (not to exceed 35 days between each monitoring)] by using one or more of the release detection methods prescribed in subsection (d)(5) - (10) of this section.

*(ii)* Piping installed or replaced on or after January 1, 2009. Except as provided in clause (iii) of this subparagraph, each suction line shall be tested or monitored for releases at least once every 30 days by using the interstitial monitoring release detection method prescribed in subsection (d)(7) of this section no later than September 1, 2018.

*(iii)* [(ii)] No release detection methods are required to be installed or applied for any piping system that conveys regulated substances under suction when such suction piping system is designed and constructed in accordance with the following standards:

*(I)* the below-grade piping operates at less than atmospheric pressure;

*(II)* the below-grade piping is sloped so that all the contents of the pipe will drain back into the storage tank if the suction is released;

*(III)* no more than [only] one check valve is included in each suction line;

*(IV)* the check valve is located aboveground, directly below and as close as practical to the suction pump; and

*(V)* verification that the requirements under subclauses (I) - (IV) of this clause have been met can be provided in the form of:

(-a-) signed as-built drawings or plans provided by the installer or by a professional engineer who is duly licensed to practice in Texas; or

(-b-) signed written documentation provided by a UST contractor who is properly registered with the agency, by a UST installer who is properly licensed with the agency, or by a professional engineer who is duly licensed to practice in Texas.

(C) Monitoring secondary containment. In addition to the requirements in subparagraphs (A) and (B) of this paragraph, all piping in a hazardous substance UST system shall also be equipped with a secondary containment system and related release detection equipment, as prescribed in subsection (c) of this section.

(c) Additional release detection requirements for hazardous substance UST systems. In addition to the release detection requirements for all UST systems prescribed in subsections (a) and (b) of this section, owners and operators of all hazardous substance UST systems shall also assure compliance with the following additional requirements.

(1) All new hazardous substance UST systems shall be in compliance with the requirements of paragraph (3) of this subsection for the entire operational life of the system.

(2) All existing hazardous substance UST systems shall be brought into compliance with the requirements of paragraph (3) of this subsection no later than December 22, 1998.

(3) Secondary containment [~~and monitoring~~].

[~~(A)~~] All hazardous substance UST systems (including tanks and piping) shall be equipped with a secondary containment system which shall be designed, constructed, installed, and maintained in accordance with §334.45(d) and §334.46(f) of this title (relating to Technical Standards for New Underground Storage Tank Systems; and Installation Standards for New Underground Storage Tank Systems).

(4) Release detection.

(A) [~~(B)~~] All hazardous substance UST systems (including tanks and piping) installed prior to January 1, 2009, shall include one or more of the release detection methods or equipment prescribed in subsection (d)(7) - (10) of this section, which shall be capable of monitoring the space between the primary tank and piping walls and the secondary containment wall or barrier.

(B) All hazardous substance UST systems (including tanks and piping) installed on or after January 1, 2009, shall be monitored by using the interstitial monitoring release detection method prescribed in subsection (d)(7) of this section no later than September 1, 2018.

(d) Allowable methods of release detection. Tanks in a UST system may be monitored for releases using one or more of the methods included in paragraphs (2) - (10) of this subsection. Piping in a UST system may be monitored for releases using one or more of the methods included in paragraphs (5) - (10) of this subsection. Any method of release detection for tanks and/or piping in this section shall be allowable only when installed (or applied), operated, calibrated, and maintained in accordance with the particular requirements specified for such method in this subsection.

(1) Tank tightness [~~testing~~] and inventory control requirements. A combination of tank tightness testing and inventory control may be used as a tank release detection method only until December 22, 1998, subject to the following conditions and requirements.

(A) Tank tightness test. Any tank tightness test shall be conducted in conformance with the following standards.

*(i)* The tank tightness test shall be conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

*(ii)* The tank tightness test shall be performed by qualified personnel who possess the requisite experience, training, and competence to conduct the test properly, who are present at the facility and who maintain responsible oversight throughout the entire testing procedure, and who have been certified by the manufacturer or developer of the testing equipment as being qualified to perform the test. The tank tightness test shall be conducted in strict accordance with the testing procedures developed by the system manufacturer or developer.

*(iii)* The tank tightness test shall be capable of detecting a release of 0.1 gallons per hour from any portion of the tank which contains regulated substances.

*(iv)* The tank tightness test shall be performed in a manner that will account for the effects of vapor pockets, thermal expansion or contraction of the stored substance, temperature of the stored substance, temperature stratification, evaporation or condensation, groundwater elevation, pressure variations within the system, tank end deflection, tank deformation, and any other factors that could affect the accuracy of the test procedures.

(B) Inventory control. All inventory control procedures shall be in conformance with the following requirements.

*(i)* All inventory control procedures shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory, such as American Petroleum Institute Publication 1621, "Bulk Liquid Stock Control at Retail Outlets;" and[~~.~~]

*(ii)* Reconciliation of detailed inventory control records shall be conducted at least once every 30 days [~~each month~~], and shall be 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 [~~month~~] plus 130 gallons.

*(iii)* The operator shall assure that the following additional procedures and requirements are followed.

*(I)* Inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank shall be recorded each operating day.

*(II)* The equipment used shall be capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch.

*(III)* Substance dispensing shall be metered and recorded within an accuracy of six or less cubic inches for every five gallons of product withdrawn.

*(IV)* The measurement of any water level in the bottom of the tank shall be made to the nearest 1/8 inch at least once every 30 days [~~a month~~], and appropriate adjustments to the inventory records shall be made.

(2) Manual tank gauging. Manual tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Manual tank gauging in accordance with this subparagraph may be used as the sole method of tank release detection only for petroleum substance tanks having a nominal capacity of 1,000 gallons or less.

(B) The use of manual tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks with a nominal capacity greater than 1,000 gallons.

(C) When used for compliance with the release detection requirements of this section, the procedures and requirements in the following clauses shall be applicable.

*(i)* For purposes of this subparagraph only, the following definitions are applicable.

*(I)* Level measurement--The average of two consecutive liquid level readings from a tank gauge, measuring stick, or other measuring equipment.

*(II)* Gauging period--A weekly period during which no substance is added to or removed from the tank. The duration of the gauging period is dependent [~~dependant~~] upon tank volume and diameter, as specified in clause (v) of this subparagraph.

*(III)* Weekly deviation--The variation between the level measurements taken at the beginning and the end of one gauging period, converted to and expressed as gallons.

*(IV)* Monthly deviation--The arithmetic average of four consecutive weekly deviations, expressed as gallons.

*(ii)* Any measuring equipment shall be capable of measuring the level of stored substance over the full range of the tank's height to the nearest 1/8 inch.

*(iii)* Separate liquid level measurements in the tank shall be taken weekly at the beginning and the ending of the gauging period, and the weekly deviation shall be determined from such level measurements.

*(iv)* Once each month, after four consecutive weekly deviations are determined, a monthly deviation shall be calculated.

*(v)* For the purposes of the manual tank gauging method of release detection, a release shall be indicated when either the weekly deviation or the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

*(I)* for a tank with a capacity of 550 gallons or less (any tank diameter): minimum duration of gauging period = 36 hours; weekly standard = ten gallons; monthly standard = five gallons;

*(II)* for a tank with a capacity of 551 gallons to 1,000 gallons (when tank diameter is 64 inches): minimum duration of gauging period = 44 hours; weekly standard = nine gallons; monthly standard = four gallons; and

*(III)* for a tank with a capacity of 551 gallons to 1,000 gallons (when tank diameter is 48 inches): minimum duration of gauging period = 58 hours; weekly standard = 12 gallons; monthly standard = six gallons.

*(vi)* When either the weekly standard or the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter.

(3) Monthly (every 30 days) tank gauging. Monthly tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Monthly tank gauging in accordance with this paragraph may be used as the sole method of tank release detection only for emergency generator tanks.

(B) The use of monthly tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks other than emergency generator tanks.

(C) When used for compliance with the release detection requirements of this section, the procedures and requirements in the following clauses shall be applicable.

*(i)* For purposes of this subparagraph [~~paragraph~~] only, the following definitions are applicable.

*(I)* Level measurement--The average of two consecutive liquid level readings from a tank gauge, measuring stick, or other manual or automatic measuring equipment.

*(II)* Gauging period--A period of at least 36 hours during which no substance is added to or removed from the tank.

*(III)* Monthly deviation--The variation between the level measurements taken at the beginning and the end of one gauging 30-day period, converted to and expressed as gallons.

*(ii)* Any measuring equipment (whether operated manually or automatically) shall be capable of measuring the level of a stored substance over the full range of the tank's height to the nearest 1/8 inch.

*(iii)* Separate liquid level measurements in the tank shall be taken at least once every 30 days [~~monthly~~] at the beginning and the ending of the gauging period, and the monthly deviation shall be determined from such level measurements.

*(iv)* For the purposes of the 30-day [~~monthly~~] tank gauging method of release detection, a release shall be indicated when the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

*(I)* for a tank with a capacity of 550 gallons or less: monthly standard = five gallons;

*(II)* for a tank with a capacity of 551 gallons to 1,000 gallons: monthly standard = seven gallons;

*(III)* for a tank with a capacity of 1,001 gallons to 2,000 gallons: monthly standard = 13 gallons; and

*(IV)* for a tank with a capacity greater than 2,000 gallons: monthly standard = 1.0% of the total tank capacity.

*(v)* When the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this chapter.

(4) Automatic tank gauging in combination with [~~and~~] inventory control.

(A) A combination of automatic tank gauging and inventory control may be used as a tank release detection method, subject to the following requirements.

*(i)* Inventory control procedures shall be in compliance with paragraph (1)(B) of this subsection.

*(ii)* The automatic tank gauging equipment shall be capable of:

*(I)* automatically monitoring the in-tank liquid levels, conducting automatic tests for substance loss, and collecting data for inventory control purposes; and

*(II)* performing an automatic test for substance loss that can detect a release of 0.2 gallon per hour from any portion of the tank which contains regulated substances.

*(iii)* The automatic tank gauge testing must be performed with the system operating in one of the following modes:

*(I)* in-tank static testing conducted at least once every 30 days; or

*(II)* continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

(B) For emergency generator tanks and used oil tanks only, automatic tank gauging may be used as a tank release detection method without inventory control, provided that the automatic tank gauging equipment shall be capable of:

*(i)* automatically monitoring the in-tank liquid levels;

*(ii)* conducting continuous automatic tests for substance loss during the periods when the emergency generator engine is not in operation; [~~and~~]

*(iii)* performing an automatic test for substance loss that can detect a release of 0.2 gallon per hour from any portion of the tank which contains regulated substances; and

*(iv)* measuring the water level at the bottom of the tank to the nearest 1/8 of an inch at least once every 30 days.

(5) Vapor monitoring. Equipment and procedures designed to test or monitor for the presence of vapors from the regulated substance (or from a related tracer substance) in the soil gas of the backfilled excavation zone may be used, subject to the following limitations and requirements.

(A) The bedding and backfill materials in the excavation zone shall be sufficiently porous to allow vapors from any released regulated substance (or related tracer substance) to rapidly diffuse through the excavation zone (e.g., gravel, sand, crushed rock).

(B) The stored regulated substance, or any tracer substance placed in the tank system, shall be sufficiently volatile so that, in the event of a substance release from the UST system, vapors will develop to a level that can be readily detected by the monitoring devices located in the excavation zone.

(C) The capability of the monitoring device to detect vapors from the stored regulated substance shall not be adversely affected by the presence of any groundwater, rainfall, and/or soil moisture in a manner that would allow a release to remain undetected for more than 30 days [~~one month (not to exceed 35 days)~~].

(D) Any preexisting background contamination in the excavation zone shall not interfere with the capability of the vapor monitoring equipment to detect releases from the UST system.

(E) The vapor monitoring equipment shall be designed to detect vapors from either the stored regulated substance, a component or components of the stored substance, or a tracer substance placed in the UST system, and shall be capable of detecting any significant increase in vapor concentration above preexisting background levels.

(F) Prior to installation of any vapor monitoring equipment, the site of the UST system (within the excavation zone) shall be assessed by qualified personnel to:

*(i)* ensure that the requirements in subparagraphs (A) - (D) of this paragraph have been met; and

*(ii)* determine the appropriate number and positioning of any monitoring [~~monitor~~] wells and/or observation wells, so that releases into the excavation zone from any part of the UST system can be detected within 30 days [~~one month of the release (not to exceed 35 days)~~].

(G) All monitoring wells and observation wells shall be designed and installed in accordance with the requirements of §334.46(g) of this title.

(6) Groundwater monitoring. Equipment or procedures designed to test or monitor for the presence of regulated substances floating on, or dissolved in, the groundwater in the excavation zone may be used, subject to the following limitations and requirements.

(A) The stored regulated substance shall be immiscible in water and shall have a specific gravity of less than one.

(B) The natural groundwater level shall never be more than 20 feet (vertically) from the ground surface, and the hydraulic conductivity of the soils or backfill between all parts of the UST system and the monitoring points shall not be less than 0.01 centimeters per second (i.e., the soils or backfill shall consist of gravels, coarse to medium sands, or other similarly permeable material).

(C) Any automatic monitoring devices that are employed shall be capable of detecting the presence of at least 1/8 inch of free product on top of the groundwater in the monitoring well or observation well. Any manual monitoring method shall be capable of detecting a visible sheen or other accumulation of regulated substances in, or on, the groundwater in the monitoring well or observation well.

(D) Any preexisting background contamination in the monitored zone shall not interfere with the capability of the groundwater monitoring equipment or methodology to detect releases from the UST system, and the groundwater monitoring equipment or methodology shall be capable of detecting any significant increase above preexisting background levels in the amount of regulated substance floating on, or dissolved in, the groundwater.

(E) Prior to installation of any groundwater monitoring equipment, the site of the UST system (within and immediately below the excavation zone) shall be assessed by qualified personnel to:

*(i)* ensure compliance with the requirements of subparagraphs (A) and (B) of this paragraph; and

*(ii)* determine the appropriate number and positioning of any monitoring wells and/or observation wells, so that releases from any part of the UST system can be detected within 30 days [~~one month (not to exceed 35 days) of the release~~].

(F) All monitoring wells and observation wells shall be designed, installed, and maintained in accordance with the requirements in §334.46(g) of this title.

(7) Interstitial monitoring for double-wall or jacketed UST systems. Equipment designed to test or monitor for the presence of regulated substance vapors or liquids in the interstitial space between the inner (primary) and outer (secondary) walls of a double-wall or

jacketed UST system may be used, subject to the following conditions and requirements.

(A) Any double-wall UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) and §334.46(f) of this title.

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substances from any portion of the primary tank or piping within 30 days [~~one month (not to exceed 35 days)~~] of the release.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater or any other water into the interstitial space due to a breach in the secondary wall of the double-wall or jacketed tank or piping system within 30 days [~~one month (not to exceed 35 days)~~] of such breach or failure (whether or not a stored regulated substance has been released into the environment).

(8) Monitoring of UST systems with secondary containment barriers. Equipment designed to test or monitor for the presence of regulated substances (liquids or vapors) in the excavation zone between the UST system and an impermeable secondary containment barrier immediately around the UST system may be used, subject to the following conditions and requirements.

(A) Any secondary containment barrier or liner system at a UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) and §334.46(f) of this title.

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substance from any portion of the UST system into the excavation zone between the UST system and the secondary containment barrier within 30 days [~~one month (not to exceed 35 days)~~] of the release.

(C) The sampling, testing, or monitoring method shall be designed and installed in a manner that will ensure that groundwater, soil moisture, and rainfall will not render the method inoperative where a release could remain undetected for more than 30 days [~~one month (not to exceed 35 days)~~].

(D) Prior to installation of any secondary containment release monitoring equipment, the site of the UST system shall be assessed by qualified personnel to:

*(i)* ensure that the secondary containment barrier will be positioned above the groundwater level and outside the designated 25-year floodplain [~~flood plain~~], unless the barrier and the monitoring equipment are designed for use under such conditions; and

*(ii)* determine the appropriate number and positioning of any observation wells.

(E) All observation wells shall be designed and installed in accordance with the requirements in §334.46(g) of this title.

(9) [~~Statistical inventory reconciliation (~~]SIR[~~)~~] in combination with [~~and~~] inventory control.

(A) A combination of SIR and inventory control may be used as a release detection method for UST system tanks and lines, subject to the following requirements.

*(i)* Inventory control procedures must be in compliance with paragraph (1)(B) of this subsection.

*(ii)* The SIR methodology as utilized by its provider or vendor, or by its vendor-authorized franchisee or licensee or representative must: [~~analyze inventory control records in a manner which can detect a release of 0.2 gallons per hour from any part of the UST system.~~]

*(I)* analyze inventory control records in a manner which can detect a release of 0.2 gallons per hour from any part of the UST system; and

*(II)* use a threshold that does not exceed one-half the minimum detectable leak rate.

*(iii)* The UST system owner and/or operator must take appropriate steps to assure that they receive an [~~a monthly~~] analysis report from the entity which actually performs the SIR analysis for the 30-day period (either the SIR provider/vendor or the provider/vendor-authorized franchisee or licensee or representative) in no more than 15 calendar days following the last day of the 30-day period [~~calendar month~~] for which the analysis is performed. This analysis report must, at minimum:

*(I)* state the name of the SIR provider/vendor and the name and version of the SIR methodology which was utilized for the analysis as they are listed in the independent third-party evaluation of that methodology;

*(II)* state the name of the company and the individual (or the name of the individual if no company affiliation) who performed the analysis, if it was performed by a provider/vendor-authorized franchisee or licensee or representative;

*(III)* state the name and address of the facility at which analysis is performed and provide a description of each UST system for which analysis has been performed;

*(IV)* state the date that the analysis was conducted;

*(V)* [~~(IV)~~] quantitatively state in gallons per hour for each UST system being monitored: the leak threshold for the 30-day period [~~month~~] analyzed, and the minimum detectable leak rate for the 30-day period [~~month~~] analyzed, and the indicated leak rate for the 30-day period and [~~month analyzed~~]; and

*(VI)* [~~(V)~~] qualitatively state one of the following for each UST system being monitored: "pass," [~~or~~] "fail," or "inconclusive."

*(iv)* Any UST system analysis report result other than "pass" must be reported to the agency by the UST system owner or operator as a suspected release in accordance with §334.72 of this title (relating to Reporting of Suspected Releases).

*(v)* Any UST system analysis report result of "inconclusive" which has not been investigated and quantified as a "pass" (in the form of a replacement UST system analysis report meeting the requirements of clause (iii) of this subparagraph) must be reported to the agency as a suspected release within 72 hours of the time of receipt of the inconclusive analysis report result by the UST system owner or operator.

(B) At least once per calendar quarter, the SIR provider/vendor must select at random, at least one of the individual UST system analyses performed by each of its authorized franchisees or licensees or representatives during that period and audit that analysis to assure that provider/vendor standards are being maintained with regard to the acceptability of inventory control record data, the acceptability of analysis procedures, and the accuracy of analysis results. The written result of that audit must be provided to the autho-

rized franchisee or licensee or representative and to the owner and/or operator of the audited UST system(s) by the SIR provider/vendor during that calendar quarter. In addition, within 30 days following each calendar quarter, the SIR provider/vendor must provide to the agency a list containing the name and address of each of its authorized franchisees or licensees or representatives which specifies for each one, the name and address of each facility at which one or more UST system audits were performed during the previous calendar quarter.

(10) Alternative release detection method. Any other release detection method, or combination of methods, may be used if such method has been reviewed and determined by the agency to be capable of detecting a release from any portion of the UST system in a manner that is no less protective of human health and safety and the environment than the methods described in paragraphs (2) - (9) [~~(1) - (8)~~] of this subsection, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(e) Release detection records.

(1) Owners and operators shall maintain the release detection records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the release detection requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the release detection system, as listed in §334.46(i) of this title, shall be maintained for as long as the release detection system is used.

(B) All written performance claims pertaining to any release detection system used, and documentation of the manner in which such claims have been justified, verified, or tested by the equipment manufacturer, methodology provider/vendor, or independent third-party evaluator shall be maintained for as long as the release detection system is used.

(C) Records of the results of all manual and/or automatic methods of sampling, testing, or monitoring for releases (including tank tightness tests) shall be maintained for at least five years after the sampling, testing, or monitoring is conducted.

(D) Records and calculations related to inventory control reconciliation shall be maintained for at least five years from the date of reconciliation.

(E) Written documentation of all service, calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least five years after the work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for as long as the release detection system is used.

(F) Records of site assessments required under subsection (d)(5) and (6) of this section (concerning vapor monitoring and groundwater monitoring) must be maintained for as long as the methods are used. Records of site assessments must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or another relevant technical discipline acceptable to the agency.

*§334.51. Spill and Overfill Prevention and Control.*

(a) General spill and overfill control requirements.

(1) Owners and operators of all new and existing underground storage tank (UST) systems shall ensure that releases of regulated substances due to spills and overfills do not occur.

(2) Prior to regulated substances being transferred and deposited into a UST system, the owner or operator shall ensure that the available volume in the tank is greater than the volume of regulated substances to be transferred into the tank.

(3) During the entire time that regulated substances are being transferred into a UST system, the owner or operator shall ensure that the entire transfer operation is continuously monitored by the person conducting the transfer. Except as provided in paragraph (4) of this subsection, such monitoring may be accomplished by either of the following methods.

(A) The person conducting the transfer shall be physically present at or near the transfer point at all times during the transfer operation, and shall have an unobstructed view of the transfer point to observe the transfer and to abate any spill or overfill.

(B) The person conducting the transfer shall be physically present at the facility at all times during the transfer operation, and shall monitor the transfer operation using a central monitoring station which is electronically connected to remote sensing equipment at each transfer point, where such equipment is designed to detect and prevent any spills or overfills.

(4) When USTs are equipped with ball float valves in the vent openings (or with other similar flow restrictors) for the purposes of compliance with the overfill prevention equipment requirements of subsection (b)(2)(C) of this section, and when regulated substances are transferred into such tanks under pressure (other than routine gravity unloading from normal transport vehicles), the following requirements shall be met during the time that regulated substances are being transferred into the tank.

(A) The person conducting the transfer shall be physically present at or near the transfer point at all times during the transfer operation, and shall have an unobstructed view of the transfer point to observe the transfer and to abate any spill or overfill.

(B) The transfer hose connection shall be equipped with an appropriate back-pressure sensor that will automatically shut off flow into the tank when the pressure in the tank reaches the tank's allowable design pressure (typically five per square inch gauge [~~psig~~]).

(5) The owners or operators shall assure that the installation and maintenance of all required spill and overfill prevention equipment, as well as the procedures used for the transfers of regulated substances to or from a [~~an~~] UST system, are in accordance with codes or standards of practice developed by a nationally recognized association or independent testing laboratory such as: [~~as specified in §334.42(d) of this title (relating to General Standards).~~]

(A) National Fire Protection Association (NFPA) Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids." The transfer procedures described in NFPA Standard 385 or American Petroleum Institute (API) Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles" may be used to comply with this subsection.

(B) API Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles," which also may be used to comply with paragraphs (2) and (3) of this subsection; or

(C) API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets," with further guidance on spill and overfill prevention.

(6) The owner or operator shall assure that all spill and overfill prevention devices installed pursuant to subsection (b) of this section are maintained in good operating condition, and that such devices are inspected and serviced in accordance with the manufacturer's [~~manufacturers'~~] specifications. In addition, the devices shall be monitored or tested in accordance with the requirements in §334.48(g) and (h) of this title (relating to General Operating and Management Requirements).

(7) In the event a release of regulated substance(s) occurs due to a spill or overfill, the owner or operator shall comply with the release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(b) Spill and overfill prevention equipment. Except as provided in paragraph (4) of this subsection, all UST systems shall be equipped with spill and overfill prevention equipment which shall be designed, installed, and maintained in a manner that will prevent any spilling or overfilling of regulated substances resulting from transfers to such systems, as provided in this subsection.

(1) Compliance schedule. All UST systems shall be in compliance with the equipment provisions of this subsection from the time of installation through the entire operational life of the system.

[~~(A) New UST systems installed on or after the effective date of this subchapter shall be in compliance with the equipment provisions of this subsection from the time of installation through the entire operational life of the system.~~]

[~~(B) Existing UST systems (i.e., UST systems for which installation has commenced or has been completed on or prior to December 22, 1988) shall be in compliance with the equipment provisions of this subsection beginning no later than December 22, 1994, and continuing for the remainder of the operational life of the system.~~]

(2) Equipment required. UST systems shall be equipped with each of the following spill and overfill prevention equipment or devices.

(A) Tight-fill fitting. The fill pipe of the tank shall be equipped with a tight-fill fitting, adapter, or similar device which shall provide a liquid-tight seal during the transfer of regulated substances into the tank.

(B) Spill containment equipment. The fill tube of the tank either shall be equipped with an attached spill container or catchment basin, or shall be enclosed in a liquid-tight manway, riser, or sump, and such equipment shall meet the following requirements.

*(i)* The spill containment device shall be designed to prevent the release of regulated substances to the environment when the transfer hose or line is detached from the fill pipe.

*(ii)* The spill containment device shall be equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container.

(C) Overfill prevention equipment. Each tank shall be equipped with a valve or other appropriate device that shall be designed to either:

*(i)* automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 95% capacity level for the tank; [~~or~~]

*(ii)* automatically restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 90% capacity level for the tank, provided that such flow restricting device shall also alert the person responsible for the delivery when such preset level is reached. Flow restrictor devices may not be used when overflow prevention is installed or replaced after September 1, 2018; or

*(iii)* emit an audible and visible alarm capable of alerting the person responsible for the delivery when the liquid level in the tank reaches a preset level which shall be no higher than the 90% capacity level for the tank, provided that the tank is also equipped with a valve or other device which is designed to automatically shut off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a preset level which shall be no higher than the 98% capacity level for the tank.

(3) Design and installation requirements.

(A) All spill and overfill prevention equipment shall be installed in accordance with the manufacturer's instructions and a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(B) All underground components of the spill and overfill prevention equipment which are designed to contain regulated substances shall be properly protected from corrosion in accordance with the applicable provisions in §334.49 of this title (relating to Corrosion Protection).

(C) The surfaces of all spill and overfill prevention equipment which are in direct contact with regulated substances shall be constructed of or lined with materials that are compatible with such regulated substances.

(D) When installing the overfill prevention equipment specified in paragraph (2)(C) of this subsection, appropriate extension devices shall be utilized as necessary to assure that the shut-off or restriction of flow into the tank is achieved at the specified preset levels, which shall be based on the manufacturer's capacity charts for the size, dimensions, and shape of the tank.

(4) Exceptions.

[~~(A)~~] UST systems are not required to be equipped with the spill and overfill prevention equipment prescribed in this subsection if one or more of the following conditions are applicable to such system:

(A) [~~(i)~~] the transfers of regulated substances into the UST system do not exceed 25 gallons per occurrence;

(B) [~~(ii)~~] the UST system is equipped with alternative equipment which has been reviewed and determined by the agency to prevent spills and overfills of regulated substances in a manner that is no less protective of human health and the environment than the equipment prescribed in this subsection, pursuant to procedures for variances found in §334.43 of this title (relating to Variances and Alternative Procedures); or

(C) [~~(iii)~~] the installation of the spill and overfill prevention equipment prescribed in this subchapter has been reviewed and determined by the agency to be impracticable due to the type, design, or use of the UST system, pursuant to procedures for variances found in §334.43 of this title.

[~~(B) For existing UST systems which are properly equipped on or before December 22, 1994, with both a tight-fill fitting as prescribed in paragraph (2)(A) of this subsection, and an automatic overfill shut-off device as prescribed in paragraph (2)(C)(i)~~

~~of this subsection, the implementation date for the installation of spill containment equipment, as prescribed in paragraph (2)(B) of this subsection, shall be deferred until December 22, 1998.~~]

(c) Spill and overfill control records.

(1) Owners and operators shall maintain the spill and overfill control records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the spill and overfill prevention and control requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the installation of any spill and overfill prevention equipment, as listed in §334.46(i) of this title (relating to Installation Standards for New Underground Storage Tank Systems), shall be maintained for as long as the spill and overfill prevention equipment is used.

(B) Records of any servicing, calibration, maintenance, inspection, monitoring, testing, and repair of any spill and overfill prevention equipment shall be maintained for at least five years after such work is completed.

(3) If an owner or operator claims an exemption from the spill and overfill equipment requirements under the provisions of subsection (b)(4) [~~(b)(4)(A)~~] of this section (i.e., transfers of 25 gallons or less), such owner or operator shall maintain appropriate transfer or inventory records for at least five years to document the basis for such exemption.

*§334.52. Underground Storage Tank System Repairs and Relining.*

(a) General requirements.

(1) Owners and operators shall ensure that any repair or relining of an underground storage tank (UST) system will prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(2) Owners and operators shall ensure that any repair or relining is conducted by qualified personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the work in accordance with the provisions of this subsection.

(3) Any repairs or relining shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory, such as:[~~,~~]

(A) National Fire Protection Association (NFPA) Standard 30, "Flammable and Combustible Liquids Code;"

(B) American Petroleum Institute (API) Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines;"

(C) API Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks;"

(D) NFPA 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair;"

(E) National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks;"

(F) Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to sti-P$_3$ Tanks;"

(G) NACE International Standard Practice SP 0285, "Corrosion Control of Underground Storage Tank Systems by Cathodic Protection;" or

(H) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks."

(4) After completion of any repairs or relining of a [~~an~~] UST system, the owner or operator shall obtain detailed written records of the repairs or relining from the person who performed the work.

(5) The requirements of this section shall not be applicable to routine and minor maintenance activities related to the tank and piping systems, such as tightening loose fittings and joints, adjusting and calibrating equipment, and conducting routine inspections and tests. Tank and piping systems may be placed back into operation immediately after the satisfactory completion of such minor maintenance activities.

(6) If any release of regulated substances is discovered or suspected during the UST system repair or relining activity, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(7) The performance of any repairs or relining of an existing UST shall not relieve the owner or operator from timely compliance with the technical standards for such tanks, as required in §334.47 of this title (relating to Technical Standards for Existing Underground Storage Tank [~~UST~~] Systems).

(b) Tank repairs and relining.

(1) The provisions of this subsection shall be applicable to the in-place repairs or relining of existing tanks. Tanks that are removed from the ground prior to repair or relining shall be considered used tanks and shall be brought into compliance with all provisions of §334.53 of this title (relating to Reuse of Used Tanks) prior to being placed back in operation.

(2) A previously used tank may be repaired or relined and placed back in operation, provided that the repair or relining is conducted in accordance with the provisions of this subsection and in a manner that will prevent releases of regulated substances due to structural failure or corrosion for the remaining operational life of the tank.

(3) Repairs or relining of fiberglass-reinforced plastic tanks shall be made only by either:

(A) an authorized representative of the tank manufacturer; or

(B) any other person possessing the requisite experience and qualifications to perform the repairs, provided that such repairs shall be performed in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(4) Additional requirements for relining.

(A) Interior lining material(s) used in the repair or reconditioning of a UST shall be compatible with the stored regulated substance, and shall be applied to a minimum thickness of 100 mils.

(B) The entire lining process, including the tank preparation, lining application, inspection, and testing shall be in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory, such as:[~~,~~]

*(i)* API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks;"

*(ii)* National Leak Prevention Association Standard 631, Chapter B "Future Internal Inspection Requirements for Lined Tanks;" or

*(iii)* Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

(5) Prior to placing the tank back into operation, any repaired or relined tank shall be either:

(A) tested by means of a tank tightness test meeting the requirements in §334.50(d)(1)(A) of this title (relating to Release Detection);

(B) internally inspected and assessed in accordance with the requirements in §334.47(b)(1)(A)(iv) of this title; or

(C) tested or assessed by any other method that has been reviewed and determined by the agency to be no less protective of human health and safety and the environment than the standards described in subparagraphs (A) and (B) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(6) Not later than December 22, 1998, the entire UST system shall be equipped with a cathodic protection system. Such system shall be designed by a qualified corrosion specialist and shall be operated and maintained in accordance with the applicable cathodic protection requirements of §334.49(c) of this title (relating to Corrosion Protection).

(c) Piping repairs and maintenance.

(1) When a release of a regulated substance has occurred as a result of holes, damage, or corrosion in the piping, valves, or fittings, the repair of the affected piping, valves, or fittings shall not be allowed. Any damaged, corroded, or defective piping sections, valves, or fittings shall be replaced with materials or components meeting the applicable requirements for new piping systems in §334.45(c) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(2) The installation or reinstallation of previously used piping, valves, or fittings in any UST system is specifically prohibited, regardless of the source or previous use of such previously used components.

(3) Prior to placing the piping system back into operation, any repaired piping system shall be tested by means of a piping tightness test meeting the requirements of §334.50(b)(2)(A)(ii)(I) of this title.

(4) If a repaired metal piping system has not already been equipped with an acceptable cathodic protection system, then the following minimum requirements shall be met prior to placing the piping system back in operation.

(A) The repaired piping sections and fittings shall be thoroughly coated with a suitable dielectric coating and shall be electrically isolated from the remaining piping system by dielectric fittings.

(B) The repaired piping sections and fittings shall be retrofitted with a field-installed cathodic protection system. Such cathodic protection system shall be designed by a qualified corrosion specialist and shall be operated and maintained in accordance with the applicable cathodic protection requirements in §334.49(c) of this title. The remaining portion of the piping system shall be brought into compliance with the minimum upgrading requirements for existing UST systems in accordance with the procedures and schedules in §334.47 of this title.

(d) Other tank system repairs and ancillary equipment repairs.

(1) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association, or independent testing laboratory within 30 days following the date of completion of the repair. All other repairs to tanks and piping must be tightness tested in accordance with §334.50(b)(2)(A)(ii)(I) and (d)(1)(A) of this title within 30 days following the date of completion of the repair.

(2) Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with §334.48(g) of this title (relating to General Operating and Management Requirements) to ensure it is operating properly.

(e) [~~(d)~~] Records for repairs and relining.

(1) Owners and operators shall maintain the repair and relining records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the applicable repairs and relining requirements in this section, and in accordance with the following minimum requirements.

(A) General information related to the repairs or relining shall be maintained for the remaining operational life of the UST system, including:

*(i)* date and description of the repairs or relining;

*(ii)* names, addresses, and telephone numbers of the persons who conducted the repairs or relining; and

*(iii)* copies of all related construction notification, registration, and certification documents filed with the agency.

(B) Results of all inspections, tests, and maintenance activities required in this section shall be maintained for at least five years.

(C) Materials specifications, warranty information, recommended test procedures, and inspection and maintenance schedules applicable to the relining of any tank shall be maintained for the remaining operational life of the UST system.

*§334.54. Temporary Removal from Service.*

(a) Applicability. An underground storage tank (UST) system shall be considered to be temporarily out of service, regardless of whether or not regulated substances remain in the UST system, when the following conditions apply.

(1) The normal operation and use of the UST system is deliberately, but temporarily, discontinued for any reason.

(2) The infrequent use of the UST system cannot be adequately justified as part of its purpose.

(3) The operation, maintenance, and/or release detection procedures are determined to be inadequate or otherwise inconsistent with the monitoring procedures normally associated with in-service systems of similar type and purpose.

(b) All UST systems. Regardless of whether or not regulated substances remain in the UST system, the owner or operator shall assure that the UST system is maintained in compliance with the follow-

ing requirements for the balance of time that the UST system remains temporarily out of service.

(1) All vent lines shall be kept open and functioning.

(2) All other piping, pumps, manways, tank access points (e.g., fill risers, automatic tank gauging risers, Stage I vapor recovery risers) and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.

(3) Testing and inspections. Spill and overfill operation and maintenance testing and walkthrough inspections (as listed in §334.48(g) and (h) of this title (relating to General Operating and Management Requirements)) are not required on temporarily out of service UST systems.

(c) Protected and monitored systems. Any UST system may remain out of service indefinitely so long as the following requirements are met during the period that the UST system remains temporarily out of service.

(1) The UST system shall be adequately protected from corrosion in accordance with the applicable requirements of §334.49 of this title (relating to Corrosion Protection).

(2) Unless the UST system has been emptied of all regulated substances (as described under subsection (d) of this section) at the time it is temporarily removed from service, the UST system shall be monitored for releases in accordance with the applicable requirements of §334.50 of this title (relating to Release Detection).

(3) Returning UST system to service.

(A) When a protected and empty UST system that has been temporarily out of service for longer than six months is placed back into service, the owner or operator shall ensure the integrity of the system by the performance of tank tightness and piping tightness tests that meet the requirements of §334.50(d)(1)(A) of this title, and as applicable, §334.50(b)(2)(A)(ii)(I)[,] or (B)(i)(I)[,] of this title, prior to bringing the system back into operation;

(B) When either a protected and monitored or a protected and empty UST system is placed back into service, the owner or operator shall also ensure that the UST system either is in compliance or is brought into compliance with all applicable release detection, and spill and overfill prevention requirements of §334.50 of this title and §334.51 of this title (relating to Spill and Overfill Prevention and Control); and

(C) Before any UST system is returned to service under this subsection, the owner or operator must first submit a construction notification form as specified in §334.6(b) of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems).

(d) Empty system.

(1) For the purposes of this section only, and specifically for the purpose of exempting certain UST systems (when temporarily out of service) the following requirements shall not apply as long as a UST system is empty: [~~from the release detection requirements of this chapter,~~]

(A) release detection (as listed in §334.50 of this title); and

(B) release detection operation and maintenance testing and inspections (as listed in §334.48(e)(1) of this title).

(2) A [~~an~~] UST system shall be considered empty when all of the following provisions have been met:

(A) [~~(1)~~] all [~~All~~] regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures;[.]

(B) [~~(2)~~] any [~~Any~~] residue from stored regulated substances which remains in the system (after the completion of the substance removal procedures under subparagraph (A) of this paragraph [~~paragraph (1) of this subsection~~]) shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3% by weight of the system at full capacity; and[.]

(C) [~~(3)~~] the [~~The~~] volume or concentration of regulated substances remaining in the system would not pose an unreasonable risk to human health and safety or to the environment if a release occurs during the period when the system is temporarily out of service.

(e) Other requirements.

(1) Releases. If a release of a regulated substance is suspected or confirmed, the owner or operator of a [~~an~~] UST system which is temporarily out of service shall comply with all release reporting, investigation, and corrective action requirements in Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(2) Registration. At the time a [~~an~~] UST system is temporarily taken out of service and at the time a [~~an~~] UST system is brought back into service, the owner shall comply with the applicable tank registration requirements in §334.7 of this title (relating [~~related~~] to Registration for Underground Storage Tanks (USTs) and UST Systems).

(3) Fees. A [~~An~~] UST which is temporarily out of service in accordance with this section shall remain subject to the agency's UST fees in Subchapter B of this chapter (relating to Underground Storage Tank Fees).

(4) Recordkeeping for temporary removal from service.

(A) Owners and operators shall maintain records adequate to demonstrate compliance with the requirements in this section, in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

(B) At a minimum, the following records shall be maintained for at least five years after the UST system is temporarily removed from service:

*(i)* date that the UST system was temporarily removed from service;

*(ii)* name, address, and telephone number of the person who prepared the UST system for the period of non-use;

*(iii)* documentation of the procedures used to prepare and empty the UST system;

*(iv)* copies of all documentation relative to any requests and approvals of extensions of time;

*(v)* name, address, and telephone number of the person who conducted the tank and piping tightness tests, prior to returning the UST system to service;

*(vi)* results of any tank and piping tightness tests; and

*(vii)* date that the UST system was returned to service.

(5) Financial assurance requirements for tanks temporarily removed from service. Note that §37.885 of this title (relating to Release from the Requirements) addresses release from financial assurance requirements, and that Texas Water Code, §26.352(e-2) and

§37.867 of this title (relating to Duty to Empty Tanks After Termination of Financial Assurance) address the duty to empty tanks after termination of financial assurance.

*§334.55. Permanent Removal from Service.*

(a) General provisions.

(1) Any owner or operator who intends to permanently remove an underground storage tank (UST) from service (by either removing the tank from the ground, abandoning the tank in-place, or conducting a permanent change-in-service) shall provide prior notice of this activity to the agency in accordance with §334.6 of this title (relating to Construction Notification for Underground Storage Tanks (USTs) and UST Systems).

(2) The procedures used in permanently removing the UST from service shall conform with accepted industry practices, and shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(3) The permanent removal from service shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the activity in accordance with the provisions of this section and in a manner designed to minimize the possibility of any threats to human health and safety or the environment.

(4) All USTs that are intended for permanent removal from service shall be emptied of all regulated substances and accumulated sludges or residues, and shall be purged of all residual vapors in accordance with accepted industry procedures commonly employed for the stored regulated substance.

(5) The handling, transportation, and disposal of any regulated substances removed from a UST system, and any contaminated soils, backfill material, groundwater, wash water, or other similar materials removed from the system or facility, shall be conducted in a safe and environmentally sound manner, and shall be in accordance with all applicable federal, state, and local regulations in effect for the type, volume, contaminant concentration, and classification of the removed material.

(6) As part of the required procedure for the permanent removal of any UST system from service, the owner or operator shall determine whether or not any prior release of a stored regulated substance has occurred from the system.

(A) This determination shall be performed subsequent to the submittal of notification to the agency as prescribed in §334.6 of this title, but prior to completion of the permanent removal from service.

(B) This determination shall be made by visual inspection of the area in and immediately surrounding the excavation zone for any above-ground releases and for any exposed below-ground releases, and by using one or both of the following methods or procedures:

*(i)* the continual operation (through the time that the stored regulated substances are removed from the UST system) of one or more of the external release monitoring and detection methods operating in accordance with §334.50(d)(5) - (8) of this title (relating to Release Detection); or

*(ii)* the performance of a comprehensive site assessment in accordance with the requirements of subsection (e) of this section.

(C) Any methods or procedures used to make this determination shall be capable of detecting any prior release of stored regulated substances from any portion of the UST system.

(D) Upon completion of this determination, the owner or operator shall:

*(i)* report any confirmed or suspected releases to the agency and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

*(ii)* prepare or assemble the detailed written records of this determination, which shall include the methods, procedures, results, and names, addresses, and telephone numbers of the persons involved in conducting such determination. Such records shall be maintained in accordance with the applicable provisions in subsection (f) of this section, and a copy of such records shall be filed with the agency in conjunction with the applicable tank registration requirements of §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems).

(7) For a UST to be considered permanently out-of-service, the owner or operator shall either remove the tank from the ground in accordance with subsection (b) of this section, abandon in-place and fill the tank with an acceptable solid inert material in accordance with subsection (c) of this section, or conduct a permanent change-in-service in accordance with subsection (d) of this section. Unused tanks (i.e., tanks at facilities which are closed or out-of-business) shall be considered temporarily out-of-service, and shall be subject to the provisions of §334.54 of this title (relating to Temporary Removal from Service), unless they have been permanently removed from service in accordance with this section.

(8) The requirements in this section are applicable to all USTs which are permanently removed from service on or after September 29, 1989 [~~the effective date of this subchapter~~].

(9) For a UST permanently removed from service prior to September 29, 1989 [~~the effective date of this subchapter~~], where the methods previously used for the release determination or the removal from service are unknown or are determined to have been inadequate, the agency may require the owner or operator to conduct any or all of the following additional activities as appropriate:

(A) proper removal of the UST system from service, in accordance with the applicable provisions of this section;

(B) completion of a comprehensive site assessment, in accordance with the requirements of subsection (e) of this section;

(C) release reporting, investigation, and corrective action if a release of a regulated substance has occurred, in accordance with Subchapter D of this chapter; and/or

(D) any other activities necessary to prevent any adverse impacts on human health and safety and the environment.

(b) Removal from the ground. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable for the removal of USTs from the ground.

(1) Except as provided under paragraph (2) of this subsection, tanks shall be properly emptied, cleaned, and purged of vapors prior to removal from the ground, in accordance with accepted industry procedures commonly employed for the stored regulated substance.

(2) When an owner or operator can demonstrate good cause for removal of a tank from the ground prior to emptying, cleaning, or purging the vapors, the owner or operator shall obtain approval from the manager of the appropriate regional [~~district~~] office (or the manager's designated representative) prior to proceeding with the removal. In this situation, the tank removal shall be accomplished only under the direct supervision of agency personnel and/or local fire officials, and

all conditions and requirements imposed by such supervisory officials shall be strictly followed.

(3) Prior to removing the tank from the ground, all connected piping and other ancillary equipment shall be emptied, disconnected, and properly plugged, capped, or removed.

(4) Storage of removed tanks.

(A) After removal, a tank shall be transported from the site within 24 hours of removal, unless prior approval of a longer on-site storage period is obtained from the manager of the appropriate regional [~~district~~] office (or the manager's designated representative).

(B) The on-site storage of tanks for a period of 24 hours or less shall be in a designated temporary storage area which shall be an adequate distance from known ignition sources and which shall be clearly identified with appropriate barriers and warning signs to restrict access by unauthorized persons.

(C) On-site storage of removed tanks for more than 24 hours (when approved by the regional [~~district~~] manager), and off-site storage for any period, shall only be allowed in locked, securely fenced, or similarly restricted areas where unauthorized persons will not have access.

(D) No later than 24 hours after removal, all removed tanks (regardless of condition) shall be legibly and permanently labeled (in letters at least two inches high) with the name of the former contents, a flammability warning (if applicable), and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products.

(E) The residual vapor levels in any removed tank which is stored at the UST facility shall be maintained at nonexplosive and nonignitable levels for the entire time that the tank remains at the facility.

(F) Regardless of where the tank is stored, not later than ten days after the tank has been removed from the ground, any residual liquids or vapors shall be permanently removed to render the tank nonignitable and nonexplosive.

(5) Transportation and disposal of removed tanks.

(A) The methods and procedures used for the handling, transporting, and disposing of any removed USTs (and parts of such tanks) shall be protective of human health and safety and the environment, and shall be in accordance with all applicable federal, state, and local regulations.

(B) Removed tanks (and any parts of such tanks) which have been emptied, thoroughly cleaned of all remaining substances and any remaining residues, and permanently purged of vapors may be appropriately disposed by scrapping, junking, or reusing for purposes unrelated to the underground storage of regulated substances.

(C) Prior to transporting any removed tank from the UST facility, the following minimum preparation procedures shall be followed.

*(i)* The remaining regulated substances shall be removed, and visible residues or sediments shall be cleaned from the tank as completely as possible, in accordance with commonly used and accepted industry practices.

*(ii)* Residual vapor levels in the tank shall be reduced to nonexplosive and nonignitable levels, and shall be maintained at such levels during the entire period of transportation.

*(iii)* All holes and openings shall be properly plugged or capped, except for one 1/8-inch diameter vent hole positioned at the top of the tank during transportation.

(D) The subsequent reuse of any removed tanks for the underground storage of regulated substances (whether on-site or off-site) shall only be allowed under the provisions of §334.53 of this title (relating to Reuse of Used Tanks).

(6) The tank owner shall develop and maintain a permanent record of the prior location of the removed tank; the date of removal; the substance previously stored; the method of conditioning the tank for removal; the methods of handling, transportation, storing, and disposing of the tank; the names, addresses, and telephone numbers of the person conducting the activities; and any information regarding any known releases from such tank. If the facility owner is not the same person as the tank owner, the tank owner shall provide a copy of such information to the site or facility owner within 30 days after the date of removal.

(c) Abandonment in-place. A UST may be permanently removed from service by abandonment in-place in lieu of actual removal from the ground. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable to the abandonment in-place of USTs.

(1) When the UST owner is not the owner of the site or facility where such tank is located, the tank owner is prohibited from abandoning such tank in-place unless the following conditions are met.

(A) The tank owner shall provide written notice to the owner of the site or facility for the abandonment in-place prior to initiating the activity.

(B) After completion of the abandonment in-place, the tank owner shall provide to the site or facility owner a legible copy of the permanent record of the abandonment, as described in paragraph (3) of this subsection.

(2) Any tank that is abandoned in-place shall be filled with a solid inert material as prescribed in this paragraph.

(A) Only solid inert materials which are free of any harmful contaminants or pollutants shall be used to fill the tank. Acceptable materials include sand, fine gravel, sand and gravel mixtures, and cement/concrete-based slurries. Other materials such as native soils, drilling muds, and commercially marketed fill materials shall not be used for filling the tank unless the material and filling procedures have been reviewed and approved by the agency in accordance with §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Adequate access openings shall be made in the top of the tank, and the tank shall be filled as completely as possible. Voids and air pockets shall be eliminated.

(C) The fill material and filling procedures shall be adequate to assure that:

*(i)* the filled tank will not surface after completion of the filling operation;

*(ii)* any settling or instability of the ground surface subsequent to the abandonment in-place is minimized or eliminated;

*(iii)* the fill materials will form a permanent solid inert filler that can be expected to remain structurally stable in the ground to prevent cave-ins, even after the subsequent deterioration of the tank walls; and

*(iv)* the filled tank and associated piping are disconnected and capped or sealed so as to preclude their future use for any storage or disposal purposes.

(3) The tank owner shall develop and maintain a permanent record of the name and address of the tank owner (and site or facility owner, if different); the abandoned tank location; the date of abandonment; the substance previously stored; the method of conditioning the tank for abandonment; release assessment results; the names, addresses, and telephone numbers of the persons conducting the activities; and information regarding the extent of any confirmed releases and any resulting remediation activities.

(A) When the tank owner is not the owner of the facility where the tank is located, the tank owner shall provide to the current facility owner a legible copy of the permanent record of the abandonment in-place. Such information shall be provided no later than 30 days after completion of the abandonment in-place.

(B) The facility owner shall maintain a permanent record of the tank abandonment in-place in accordance with subsection (f) of this section.

(C) Prior to the sale or conveyance of the facility where an abandoned UST is located, the facility owner shall provide written documentation of the tank abandonment information to the succeeding property owner.

(d) Change-in-service. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable for any change-in-service where a UST system storing regulated substances is converted to a system storing materials other than regulated substances.

(1) Prior to refilling with materials other than regulated substances, the UST shall be properly emptied, cleaned, and purged of vapors in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory for the stored regulated substance. The procedures for emptying, cleaning, and purging the UST shall be designed to remove as much as possible of the previously stored regulated substances, including all liquids, vapors, sludges, and residues, in a manner that is protective of human health and safety or the environment.

(2) A change-in-service where a UST storing regulated substances is to be converted for the storage of either drinking water or food products intended for human consumption is specifically prohibited.

(3) Any change-in-service shall be in accordance with all applicable federal, state, and local regulations.

(4) The owner shall develop and maintain a permanent record of the location of the UST; the date of the change-in-service; the regulated substance previously stored; the method of conditioning the tank for the change-in-service; the names, addresses, and telephone numbers of the persons conducting the activities; and any information regarding any known releases of regulated substances from such tank. If the facility owner is not the same person as the UST owner, the UST owner shall provide a copy of such information to the facility owner within 30 days after the date of the change-in-service.

(5) For the purposes of this section, a UST which has been converted to the storage of materials other than regulated substances (i.e., water) shall be subject to the procedures for temporary removal from service in §334.54 of this title, except when the stored materials are utilized on a regular basis for beneficial purposes.

(e) Site assessment.

(1) A site assessment meeting the requirements of this subsection shall be performed by the owner or operator of a UST system in the following situations to determine whether or not a release has occurred:

(A) when the site assessment is selected as the method to achieve compliance with the release determination requirements of subsection (a)(6) of this section for a UST which is permanently removed from service on or after September 29, 1989 [~~the effective date of this subchapter~~];

(B) when the agency determines that a site assessment is necessary at any site or facility where a UST was permanently removed from service prior to September 29, 1989 [~~the effective date of this subchapter~~], and where the site assessment or release determination at the time of removal from service was determined to be either nonexistent or inadequate; or

(C) when the agency determines that a site assessment is necessary at any site or facility where a release or suspected release may pose a current or potential threat to human health or safety or the environment.

(2) The site assessment shall be conducted by qualified personnel possessing the appropriate skills, experience, and competence to perform the assessment in accordance with recognized industry practices and the provisions of this section and shall be supervised by a person who is currently licensed by the Texas Commission on Environmental Quality (TCEQ) as a UST installer or on-site supervisor or currently registered with the TCEQ as a corrective action project manager.

(3) Any procedures used for the site assessment must be capable of measuring for the presence of a release from any part of the UST system and, at a minimum, must include measurements for releases at locations where contamination is most likely to be present at the site.

(4) The owner or operator shall assure that in selecting the sampling or measurement methods, the sample types, and the sampling or measurement locations, the persons conducting the assessment shall take into consideration the following factors to ensure that the presence of any released regulated substances is detected and quantified:

(A) the specific method of removing the UST system from service;

(B) the nature and composition of the stored regulated substance;

(C) the type and characteristics of the backfill material and surrounding soils;

(D) the presence of groundwater, and its depth with relation to the UST system and the surface of the ground; and

(E) any other factors that may affect the reliability or effectiveness of the site assessment procedures or techniques.

(5) One or more of the following methods may be used for conducting the site assessment and release determination required under this section, provided that such methods are in compliance with the performance standards in paragraphs (2) - (4) of this subsection:

(A) collection and analysis of soil samples secured from unsaturated sections of the UST system excavation zone and surrounding soils, where such samples shall be analyzed for major constituents and/or indicator parameters of the stored regulated substance(s);

(B) collection and analysis of groundwater samples secured from the UST system excavation zone and surrounding area,

where such samples shall be analyzed for all major constituents or indicator parameters of the stored regulated substance(s); and/or

(C) any other site assessment or release determination method or procedure which has been reviewed and determined by the agency to detect prior releases of the stored regulated substance(s) in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph, as provided under §334.43 of this title.

(D) The owner or operator must report any suspected or confirmed releases indicated by the site assessment to the agency and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this chapter.

(f) Records for permanent removal from service.

(1) Owners and operators shall maintain records adequate to demonstrate compliance with the requirements of this section, in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) At a minimum, the following records shall be maintained [~~for as long as any UST remains in service at the facility, or~~] for five years after the UST system is permanently removed from service[~~, whichever is longer~~]:

(A) records of the release determination or site assessment, in accordance with the requirements in subsection (a)(6)(D)(ii) of this section;

(B) records related to the tank removal procedures (as applicable), in accordance with the requirements in subsection (b)(6) of this section;

(C) records related to the abandonment in-place of a UST system (as applicable), in accordance with the requirements in subsection (c)(3) [~~(c)(4)~~] of this section; and

(D) records related to the change-in-service of a UST system (as applicable), in accordance with the requirement in subsection (d)(4) of this section.

(g) Codes of practice. The following cleaning and closure procedures may be used to comply with this section:

(1) American Petroleum Institute (API) Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks;"

(2) API Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks;"

(3) API Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks;"

(4) API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks;" and

(5) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair."

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. RELEASE REPORTING AND CORRECTIVE ACTION

## 30 TAC §334.72, §334.74

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs) and aboveground storage tanks (ASTs); and TWC, §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or an AST.

The United States Environmental Protection Agency has amended the rules pertaining to underground storage tank requirements and standards (40 Code of Federal Regulations (CFR) Part 280) and state program approval (40 CFR Part 281), effective October 13, 2015. TWC, §26.3441 and §26.357, require standards and rules concerning USTs and ASTs adopted by the commission to be as stringent as federal requirements. The rules implement or track as closely as possible the amended federal rules.

*§334.72. Reporting of Suspected Releases.*

Owners and operators of aboveground storage tank (AST) and underground storage tank (UST) systems must report to the agency within 24 hours (see §334.50(d)(9)(A)(v) of this title (relating to Release Detection) for reporting requirements associated with statistical inventory reconciliation inconclusive results), and follow the procedures in §334.74 of this title (relating to Release Investigation and Confirmation Steps) for any of the following conditions:

(1) The discovery by owners and operators, or written notification by others to the owner or operator, of released regulated substances at the AST or UST site or in the surrounding area (such as the presence of non-aqueous phase liquids [~~(NAPL)~~] or vapors in soils, basements, sewer and utility lines, and nearby surface water).[~~;~~]

(2) Unusual operating conditions observed by owners or operators (such as the erratic behavior of product dispensing equipment that is consistent with or indicates a release, the sudden loss of product from the AST or UST system, [~~or~~] an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless: [~~the system equipment is found to be defective but not leaking;~~]

(A) the system equipment or component is found not to be releasing regulated substances to the environment;

(B) any defective system equipment or component is immediately repaired or replaced; and

(C) for secondarily contained systems, except as provided for in §334.50(d)(8)(C) of this title, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

(3) Monitoring results, including investigation of an alarm, from a release detection method required under §334.50 of this title [~~(relating to Release Detection)~~] or other method that indicates a release may have occurred unless:

(A) the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, or the monitoring procedure is found to be ineffective, and is modified, and additional monitoring does not confirm the initial result; [~~or~~]

(B) in the case of inventory control, described in §334.50(d)(1)(B) of this title, a second 30-day period [~~month~~] of data does not confirm the initial result or the alarm investigation determines no release has occurred; [~~or~~]

(C) the leak is contained in the secondary containment:

*(i)* except as provided for in §334.50(d)(8)(C) of this title, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

*(ii)* any defective system equipment or component is immediately repaired or replaced; or

(D) the alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

[~~(4) For UST systems which are required to be of double-wall construction or secondarily contained and for UST systems in which interstitial monitoring is being employed for compliance with the requirements of §334.50 of this title, whenever monitoring or observation indicates a breach in either the primary wall or secondary barrier (whether or not a release of regulated substance into the environment has occurred), unless the primary or secondary barrier is determined to be intact, and the monitoring equipment is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.~~]

*§334.74. Release Investigation and Confirmation Steps.*

Unless corrective action is initiated in accordance with §§334.76 - 334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Site Assessment; Removal of Non-Aqueous Phase Liquids (NAPLs); Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan), owners or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under §334.72 of this title (relating to Reporting of Suspected Releases) within 30 days, using either the following steps or another procedure and schedule approved or required by the agency.

(1) System test. Owners or operators must conduct tests [~~{~~]according to the requirements for tightness testing in §334.50 of this title (relating to Release Detection) and secondary containment testing described in §334.48(e) of this title (relating to General Operating and Management Requirements), as appropriate[~~}~~ ~~that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both~~].

(A) The test must determine whether:

*(i)* a leak exists in the portion of the tank that routinely contains product or the attached delivery piping; or

*(ii)* a breach of either wall of the secondary containment has occurred.

(B) [~~(A)~~] If the system test confirms a leak into the interstice or a release, owners [~~Owners~~] and operators must repair, [~~or~~] replace, or close the aboveground storage tank (AST) or underground storage tank (UST) system, and begin corrective action in accordance with §§334.76 - 334.81 of this title if the test results for the system, tank, or delivery piping indicate that a leak exists.

(C) [~~(B)~~] Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(D) [~~(C)~~] Owners and operators must conduct a site check as described in paragraph (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the AST or UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence and source of the release.

(A) If the test results from an excavated area, or other area(s) of the AST or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with §§334.76 - 334.81 of this title.[~~;~~]

(B) If the test results from an excavated area, or other area(s) of the AST or UST site do not indicate that a release has occurred, further investigation is not required.

(3) In the event there is no evidence of a release after performing the tests required in paragraphs (1) and (2) of this section, the owner or operator must file a report which contains a detailed description of the investigative procedures followed in addressing the requirements of this section and which includes the results of all tests or monitoring performed. This report must be filed with the agency not later than 45 days after the first observation of the suspected release or another schedule approved or required by the agency. The owner or operator shall include with this report a statement which has been signed by the owner or operator certifying that the requirements of this section have been met.

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. ABOVEGROUND STORAGE TANKS

### 30 TAC §§334.123 - 334.125, 334.127

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule; and TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks and aboveground storage tanks.

The proposed amendments are administrative in nature and include updates to references to the commission, from the Texas Natural Resource Conservation Commission (TNRCC) to Texas Commission on Environmental Quality (TCEQ), which changed in House Bill 2912, 77th Texas Legislature, 2001, and Senate Bill 318, 77th Texas Legislature, 2001.

*§334.123. Exemptions for Aboveground Storage Tanks (ASTs).*

(a) The following aboveground storage tanks (ASTs) are exempt from regulation under this subchapter:

(1) a farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for non-commercial [~~noncommercial~~] purposes;

(2) a tank used for storing heating oil for consumptive use on the premises where stored;

(3) a septic tank;

(4) a surface impoundment, pit, pond, or lagoon;

(5) a stormwater or wastewater collection system;

(6) a flow-through process tank;

(7) a tank, liquid trap, gathering line, or other facility used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Texas Natural Resources Code, §91.101;

(8) a tank located on or above the surface of the floor of an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the sole or principal substance in the tank is a hazardous substance; and

(9) a tank that is located at or is part of a petrochemical plant, a petroleum refinery, an electric generating facility, or a bulk facility.

(b) The following pipeline facilities are exempt from regulation under this subchapter, as provided in Texas Water Code, §26.344:[~~;~~]

(1) an interstate pipeline facility, including gathering lines, or [~~and~~] any AST connected to such facility, if the pipeline facility is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code, §60101, et seq. and its subsequent amendments or a succeeding law).[~~:~~]

[~~(A) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §1671, et seq.); or~~]

[~~(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code §2001, et seq.);~~]

(2) an intrastate pipeline facility or any AST connected to such a facility, if the pipeline facility is regulated under one of the following state laws:

(A) the Texas Natural Resources Code, Chapter 111;

(B) the Texas Natural Resources Code, Chapter 117; or

(C) Texas Civil Statutes, Article 6053-1 and 6053-2.

(c) Upon request by the agency, the owner and operator of a tank claimed to be exempted under this section must provide appropriate documentation or other information in a timely manner to support that claim.

*§334.124. Exclusions for Aboveground Storage Tanks (ASTs).*

(a) Except as provided in subsection (b) of this section, the following aboveground storage tanks (ASTs) are excluded from regulation under this subchapter:

(1) any tank with a capacity of 1,100 gallons or less;

(2) any emergency spill protection or emergency overflow containment tank, including any sump or secondary containment system, which is used solely for the temporary storage or containment of petroleum products resulting from a leak, spill, overfill, or other unplanned release of petroleum products from any source, and where the petroleum products are routinely removed within 48 hours of the discovery of the release, provided that this tank must be inspected for a release no less than once every 30 days [~~month~~];

(3) any tank that contains petroleum products at such dilute concentrations that:

(A) the mixture is not capable of being used as a fuel for the propulsion of a motor vehicle or aircraft; and

(B) any release would not pose any significant threat to human health and safety or the environment;

(4) a transformer or other electrical equipment that is used in the transmission of electricity.

(b) Notwithstanding the exemptions in subsection (a) of this section, any AST containing petroleum products located at a retail service station is subject to the construction notification requirements of §334.126 of [~~the~~] this title (relating to Installation Notification for Aboveground Storage Tanks (ASTs)).

(c) Upon request by the agency, the owner and operator of a tank claimed to be excluded under this section must provide appropriate documentation or other information in a timely manner to support that claim.

*§334.125. General Prohibitions and Requirements for Aboveground Storage Tanks (ASTs).*

(a) Delivery prohibition. Except as provided in paragraph (1) of this subsection, on or after June 25, 1990 [~~the effective date of this subchapter~~], no common carrier (as defined in §334.2 of this title (relating to Definitions) shall deposit any petroleum products into an aboveground storage tank (AST) unless he observes that the owner or operator has a valid, current registration certificate, issued by the agency in accordance with §334.127 of this title (relating to Registration for [~~of~~] Aboveground Storage Tanks (ASTs)).

(1) For new or replacement AST systems, only during the initial period ending 90 days after that petroleum product is first de-

posited into such system(s), a common carrier may accept, as adequate to meet this requirement, documentation that the owner or operator has a "temporary delivery authorization" (as defined at §334.127(h) of this title) issued by the agency for the facility at which the new or replacement AST system(s) exists.

(2) A common carrier delivering petroleum product into an AST system may observe a valid, current, original registration certificate (or temporary delivery authorization, if applicable), or a legible copy of the same.

(b) Owner/Operator requirements. The owner and operator of ASTs regulated under this section must make available to a common carrier a valid, current Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (TCEQ) [~~(TNRCC)~~] tank registration certificate (or TCEQ [~~TNRCC~~] temporary delivery authorization, as applicable) before delivery of a petroleum product(s) into the AST(s) can be accepted. The bill of lading for the first delivery of petroleum product into any new or replacement AST system at the facility must be attached to the temporary delivery authorization for that facility.

*§334.127. Registration for Aboveground Storage Tanks (ASTs).*

(a) General provisions.

(1) All aboveground storage tanks (ASTs) in existence on or after September 1, 1989, must be registered with the agency on authorized agency forms in accordance with subsection (e) of this section, except for those tanks which:

(A) are exempt from regulation under §334.123 of this title (relating to Exemptions for Aboveground Storage Tanks (ASTs)); or

(B) are excluded from regulation under §334.124 of this title (relating to Exclusions for Aboveground Storage Tanks (ASTs)).

(2) The owner and operator of an AST are responsible for compliance with the tank registration requirements of this section. An owner or operator may designate an authorized representative to complete and submit the required registration information; however, the owner and operator remain responsible for compliance with the provisions of this section.

(3) All ASTs subject to the registration requirements of this section are also subject to the fee provisions in §334.128 of this title (relating to Annual Facility Fees for Aboveground Storage Tanks (ASTs)), except where specifically exempted from such fee provisions. The failure by a tank owner or operator to properly or timely register any tanks shall not exempt the owner from such fee assessment and payment provisions.

(4) Proper completion of the specified agency tank registration form will result in the agency's issuance of a registration certificate for the tanks at the facility covered by that registration. This certificate is tied to the delivery prohibitions detailed in §334.125 of this title (relating to General Prohibitions and Requirements for Aboveground Storage Tanks (ASTs)).

(b) Existing tanks. Any person who owns or operates an AST subject to the provisions of this section that was in existence on September 1, 1989, shall register such tank with the agency not later than March 1, 1990, on an authorized agency form.

(c) New or replacement tanks. Any person who owns or operates a new or replacement AST subject to the provisions of this section that is placed into service on or after September 1, 1989, must register the tank with the agency on an authorized agency form [~~no later than March 1, 1990, or~~] within 30 days from the date any petroleum product is first placed into the tank[~~, whichever is later~~].

(d) Changes or additional information. An owner or operator of an AST subject to the provisions of this section must provide written notice to the agency of any changes or additional information concerning the status of any regulated tanks, including, but not limited to, information regarding the operational status, condition, substance stored, ownership, location of records, and number of tanks. This notice must be submitted on an authorized agency form which has been completed in accordance with subsection (e) of this section. This form must be properly completed and signed, and shall include the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (TCEQ) [~~(TNRCC)~~] facility identification number in the appropriate space on the form. Notice of any change or additional information must be filed with the agency within 30 days of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(e) Required form for providing AST registration information.

(1) Any AST owner or operator required to submit tank registration information under subsections (a) - (d) of this section must provide all the information indicated on the agency's authorized form for each regulated AST owned.

(2) The tank registration form must be filled out completely and accurately. Upon completion, the form must be dated and signed by the owner, operator, or an authorized representative of the owner or operator, and must be filed with the agency within the time frames specified in this section.

(3) All AST owners or operators required to submit AST registration information under subsections (a) - (d) of this section must provide the registration information for all ASTs located at a particular facility on the same registration form.

(4) All AST owners or operators who own or operate ASTs located at more than one facility must complete and file a separate registration form for each facility where regulated ASTs are located, unless otherwise allowed under subsection (f) of this section.

(5) If additional documents are submitted with new or revised registration data, the specific facility identification information (including the facility identification number, if known) must be conspicuously indicated on each document, and all such documents must be securely attached to and filed with the registration form.

(f) Registration requirements for movable ASTs. Movable or mobile ASTs which are regularly used to store petroleum products (e.g., skid tanks) must also be registered by the owner or operator in accordance with the provisions of this section. When such tanks are intended to be moved from one location to another on a regular basis and are not permanently part of any particular facility, then an owner or operator may register the tanks in accordance with the following procedures:

(1) for [~~For~~] the purposes of completing the tank registration form, the owner or operator must identify the facility location for such movable tanks as the owner's or operator's principal business address or location;

(2) the [~~The~~] owner or operator must continuously maintain complete and accurate records of the specific location, operational status, condition, and type of petroleum products stored at the owner's or operator's principal business address or location. At any given time, the records must include the required tank information for at least the preceding five years. Such records must be readily accessible and available for inspection upon request by agency personnel; and

(3) any [~~Any~~] movable or mobile tank which is registered at the owner's or operator's business address or location, rather than at the actual facility location, must be permanently and legibly labeled

with the agency's designated identification number for such tank by painting, decals, tags, or other permanent identification method.

(g) Inadequate information. When any of the required AST registration information submitted to the agency is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the agency may require the owner and/or operator to submit additional information. An owner and/or operator must submit any such additional information within 30 days of receipt of such request.

(h) Temporary delivery authorization.

(1) Upon receipt of a TCEQ [~~TNRCC~~] construction notification form indicating pending installation of a new or replacement AST system(s), the agency will issue a temporary delivery authorization for that tank system(s).

(2) The temporary delivery authorization is valid for no more than 90 days after the first delivery of petroleum product into the new or replacement AST system.

(3) The AST owner and operator are responsible for maintaining complete and accurate records of the date of the first deposit of petroleum product into a new or replacement AST, as well as the date that the initial 90-day period expires. The bill of lading for the first delivery of regulated substance into any new or replacement AST at the facility must be attached to the temporary delivery authorization for that facility.

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## SUBCHAPTER G. TARGET CONCENTRATION CRITERIA

### 30 TAC §334.208

Statutory Authority

The amendment is proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule.

The proposed amendment is administrative in nature and includes updates to references to the commission, from the Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality, which changed in House Bill 2912, 77th Texas Legislature, 2001, and Senate Bill 318, 77th Texas Legislature, 2001.

*§334.208. Model Institutional Controls.*

This is an example of the language the agency would accept for deed restrictions, etc., that address residual contamination left at a given location. In some instances an institutional control is an acceptable alternative to further remediation, but adequate notice via a deed restriction, etc., is needed for the protection of current and future property owners.
Figure: 30 TAC §334.208
[~~Figure: 30 TAC §334.208~~]

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## SUBCHAPTER I. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING AND CONTRACTOR REGISTRATION

### 30 TAC §334.407, §334.424

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule.

The proposed amendments are administrative in nature and include updates to references to the commission, from the Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality, which changed in House Bill 2912, 77th Texas Legislature, 2001, and Senate Bill 318, 77th Texas Legislature, 2001.

*§334.407. Other Requirements for an Underground Storage Tank Contractor.*

(a) A registered underground storage tank (UST) contractor is required to maintain insurance and net worth requirements, as required by §30.315 of this title (relating to Qualifications for an Initial Registration), throughout the period that the contractor holds a valid registration from the executive director.

(b) A UST contractor subject to the provisions of this subchapter employed or otherwise engaged by a UST owner or operator (or by any other person representing to be the UST owner or operator) to conduct the installation, repair, or removal of a UST shall comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 of this title (relating to Edwards Aquifer).

(c) Compliance with the provisions of this subchapter by a registered contractor shall not relieve such contractor from the responsibility of compliance with all applicable regulations legally promulgated by the United States Environmental Protection Agency [~~EPA~~], United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of State Health Services [~~Health~~], Texas Department of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(d) A UST contractor must have an on-site supervisor who is licensed by the agency under this subchapter at the site at all times during the critical junctures of the installation, repair, or removal, as defined in §30.307 of this title (relating to Definitions).

(e) A UST contractor must prominently display the UST contractor registration number on all bids, proposals, offers, and installation drawings.

*§334.424. Other Requirements for an On-Site Supervisor.*

(a) A licensed on-site supervisor subject to the provisions of this subchapter that is engaged in the installation, repair, or removal of underground storage tanks (USTs) shall be required to comply with all applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 213 of this title (relating to Edwards Aquifer).

(b) Compliance with the provisions of this subchapter by a licensed on-site supervisor shall not relieve such licensee from the responsibility of compliance with all applicable regulations legally promulgated by the United States Environmental Protection Agency [~~EPA~~], United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Department of State Health Services [~~Health~~], Texas Department of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(c) A licensed on-site supervisor who offers to undertake, represents to undertake, or does undertake the installation, repair, or removal of a UST shall either be registered as a UST contractor in accordance with this subchapter, or be employed by a registered UST contractor.

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. STORAGE, TREATMENT, AND REUSE PROCEDURES FOR PETROLEUM-SUBSTANCE CONTAMINATED SOIL

**30 TAC §§334.491, 334.496, 334.499**

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule.

The proposed amendments are administrative in nature and include updates to references to the commission, from the Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality, which changed in House Bill 2912, 77th Texas Legislature, 2001, and Senate Bill 318, 77th Texas Legislature, 2001.

*§334.491. Notice to Owners or Operators.*

(a) Written notice shall be provided in accordance with this section to any person, including the tank owner and operator, with any offer to perform any services of storage, treatment, or reuse of petroleum-substance contaminated soil proposed after December 27, 1996 [~~the effective date of these rules~~].

(b) The notice shall contain the following:

(1) the facility registration number issued pursuant to this subchapter's registration requirements;

(2) the following disclaimer reproduced in its entirety: "The registration of a storage or treatment facility by the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (TCEQ) does not constitute endorsement, licensing, or promotion of any storage or treatment facility. Registration does not imply that the TCEQ [~~Texas Natural Resource Conservation Commission~~] guarantees the quality of the work performed or that the cost of the work will be reimbursed."

*§334.496. Shipping Procedures Applicable to Generators of Petroleum-Substance Waste.*

(a) No generator shall transport petroleum-substance waste from the generating site unless the waste has been properly sampled to determine the levels of all possible contaminants in the waste. Necessary documentation shall, at a minimum, consist of documentation on the sampling, handling, chain-of-custody documentation, and copies of signed laboratory reports on samples collected from the specified wastes that contain results of analysis for:

(1) the major components of the petroleum-substance waste such as benzene, toluene, ethylbenzene [~~ethyl benzene~~], total xylenes, and total petroleum hydrocarbons or the major components of total petroleum hydrocarbons; and

(2) any other contaminants as specified by the agency based on specific conditions of the generating site.

(b) No generator of petroleum-substance waste within the State of Texas shall allow the transport of such wastes to an off-site waste storage, treatment, reuse, or disposal facility unless the following requirements are met:

(1) a Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (TCEQ) [~~(TNRCC)~~] petroleum-substance

manifest is initiated, to include all applicable information, by the generator; and

(2) the generator designates on the manifest at least one facility or area legally authorized to receive the waste. A generator may also designate one alternate facility or area which is legally authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. If the transporter is unable to deliver the waste to either the designated facility or the alternate facility, the generator shall either immediately designate another facility for receipt or instruct the transporter to immediately return the waste. Upon such redesignation by the generator, the generator shall immediately prepare an amended waste manifest.

(c) No generator of petroleum-substance waste from outside of the State of Texas shall allow transport of waste into the State of Texas unless the following requirements are met:

(1) a TCEQ [~~TNRCC~~] petroleum-substance manifest is initiated by the generator to include all applicable information;

(2) the manifest shall accompany the waste to the receiving facility; and

(3) the waste is classified as non-hazardous [~~nonhazardous~~] by the state in which it is generated.

(d) At the time of waste transfer, the generator or generator's authorized representative shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §334.497 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); and

(4) give the transporter the remaining copies of the manifest.

*§334.499. Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities.*

(a) No owner or operator of a storage, treatment, or disposal facility may accept delivery of petroleum-substance waste for storage, treatment, or disposal unless:

(1) a Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (TCEQ) [~~(TNRCC)~~] Petroleum Storage Tank (PST) - Waste Manifest accompanies the shipment which designates that facility to receive the waste;

(2) the facility owner or operator signs the PST-Waste Manifest and immediately gives at least one copy of the signed PST-Waste Manifest to the transporter;

(3) the facility owner or operator retains one copy of the PST-Waste Manifest in accordance with §334.500 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities); and

(4) within 30 days after receipt of the waste, the facility owner or operator sends a copy of the PST- Waste Manifest to the generator.

(b) When a facility or reuse area receives petroleum-substance waste accompanied by a PST-Waste Manifest, the facility owner or operator, or his agent, or the owner or operator of the property designated for the reuse area shall note any significant discrepancies on each copy of the PST-Waste Manifest.

(1) Significant discrepancies are differences between the quantity or type of waste designated on the PST-Waste Manifest and the quantity or type of waste a facility actually received. Significant discrepancies in type of waste are obvious differences which can be discovered by inspection or waste analysis.

(2) Upon discovering a significant discrepancy, the facility owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the facility owner or operator shall, within five days, submit to the agency a letter describing the discrepancy and attempts to reconcile it, and a copy of the PST-Waste Manifest at issue. The facility owner or operator shall ensure that the waste is a petroleum-substance waste eligible for acceptance by the facility pursuant to this subchapter and shall report any unreconciled discrepancies discovered during any analyses or evaluation.

(c) No owner or operator of a storage, treatment, or disposal facility in Texas shall accept wastes from an out-of-state generator or location unless the following requirements are met:

(1) the waste is accompanied by legible copies of the signed TCEQ [~~TNRCC~~] PST-Waste Manifest for all wastes received pursuant to §334.496 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste);

(2) the facility owner or operator obtains documentation that the wastes contain only petroleum-substance contamination, have been generated from an underground or aboveground storage tank as defined in this chapter, and are classified as non-hazardous [~~nonhazardous~~] in the state where generated. This documentation shall consist of documentation on the sampling methods, sample handling, chain-of-custody documents, and legible copies of signed laboratory reports on samples collected from the specified wastes. The number of samples shall be sufficient to characterize the entire quantity of wastes. The analyses shall include:

(A) volatiles and semi-volatiles by United States Environmental Protection Agency (EPA) Methods 8240 and 8270, respectively;

(B) toxicity characteristic listed constituents as specified in 40 Code of Federal Regulations, Part 261;

(C) organochlorine pesticides and polychlorinated biphenyls by EPA Method 8080; and

(D) any other analyses necessary to characterize the wastes or as specified by the agency; and/or

(3) the facility owner or operator obtains documentation from the appropriate governing agency in the originating jurisdiction that the wastes are classified as non-hazardous [~~nonhazardous~~] and meet the definition of petroleum-substance wastes (as such wastes are defined in §334.2 of this title (relating to Definitions)), and provides such documentation to the agency prior to receiving the out-of-state soils.

(d) The facility owner or operator shall not accept any wastes for storage, treatment, or disposal from an in-state generator or location which contain any contaminants above natural background levels other than petroleum substances as defined in this subchapter, unless otherwise approved by the agency. Documentation of the contaminants in the waste shall consist of a sufficient number of samples to characterize the waste and the samples shall be analyzed for all contaminants that may occur in that waste.

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## SUBCHAPTER N. OPERATOR TRAINING

### 30 TAC §§334.602, 334.603, 334.605

Statutory Authority

The amendments are proposed under 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 the conservation of natural resources and protection of the environment; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §5.105, which directs the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which requires the commission to control the quality of water by rule; TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue; TWC, §26.341, which states that it is the policy of this state to maintain and protect the quality of groundwater and surface water resources in the state from certain substances in underground and aboveground storage tanks that may pollute groundwater and surface water resources, and requires the use of all reasonable methods, including risk-based corrective action to implement this policy; and TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground and aboveground storage tanks.

The United States Environmental Protection Agency has amended the rules pertaining to underground storage tanks (40 Code of Federal Regulations Parts 280 and 281) on technical requirements and state program approval effective October 13, 2015. TWC, §26.357, requires standards and rules concerning underground storage tanks adopted by the Texas Commission on Environmental Quality to be at least as stringent as federal requirements. The rules implement or track as closely as possible the amended federal rules.

*§334.602. Designation and Training of Classes of Operators.*

(a) Owners or operators shall identify and designate for each underground storage tank (UST) facility including unmanned facilities, at least one named individual for each class of operator - Class A, Class B, and Class C. All individuals designated as a Class A, B, or C operator shall, at a minimum, be trained and certified in accordance with this subchapter. For the purposes of this subchapter, the terms "Class A operator," [~~Operator",~~] "Class B operator," [~~Operator",~~] "Class C operator," [~~Operator",~~] "certified operator, [~~Certified Operator~~]" or "designated operator [~~Designated Operator~~]" are terms specific to the training requirements of this subchapter. The term "operator" used without these descriptors is the same as the term "operator" used in this chapter [~~Chapter 334~~] generally and as specifically defined in §334.2(75) [~~§334.2(70)~~] of this title (relating to Definitions).

(1) Owners and operators may designate different individuals for each class of operator, or one individual for more than one of the operator classes.

(2) Any individual designated for more than one operator class shall be trained and certified for each operator class, except that training and certification as a Class B operator also entitles that individual to certification as a Class A operator.

(3) An individual may be designated as a Class A operator [~~Operator~~] for one or more facilities. An individual may be designated as a Class B operator [~~Operator~~] for one or more, but not to exceed 50 facilities. An individual Class C operator must be specifically trained for each facility.

(4) During hours of operation, UST facilities must have at least one certified operator (either a Class A, Class B, or Class C operator) present at the UST facility, except when a UST facility is unmanned. A UST facility is considered unmanned when during the normal course of business there is routinely no attendant present at the facility who could respond to alarms or emergencies related to the UST system. (Examples of unmanned UST facilities include, but are not limited to, card lock or card access fueling stations, telecommunication towers or utility transfer stations serviced by emergency generator USTs, and unattended UST systems located at industrial facilities.) Unmanned facilities must have weather resistant signage clearly visible from any dispenser which instructs users with regard to basic safety procedures, provides the customer with a 24-hour telephone contact number monitored by a Class A, B, or C operator for the facility and provides instruction on when to call 911.

(b) The three classes of operators are identified as follows.

(1) Class A operator [~~Operator~~].

(A) Functions. A Class A operator of a UST facility is an individual who typically has primary responsibility for ensuring the proper operation and maintenance of the UST systems, particularly in the capacity of managing resources and personnel necessary to achieve and maintain compliance with all UST regulations.

(B) Qualifications and training [~~Training~~]. Class A operators must be trained in and have a general knowledge of the requirements of applicable UST regulations, including, but not limited to registration, system components, product compatibility, spill and overfill prevention, corrosion protection, release detection, recordkeeping, notification, release reporting and response, temporary and permanent closure, operator training, and financial responsibility.

(2) Class B operator [~~Operator~~].

(A) Functions. A Class B operator of a UST facility is an individual who ensures the implementation of all applicable requirements of these regulations in the field and implements the day-to-day aspects of the operation and maintenance of, and recordkeeping for, UST systems.

(B) Qualifications and training [~~Training~~]. Class B operators must be trained in and have detailed knowledge of the requirements of applicable UST regulations, including, but not limited to registration, system components, product compatibility, spill and overfill prevention, corrosion protection, release detection, recordkeeping, notification, release reporting and response, temporary and permanent closure, operator training and financial responsibility. A UST facil-

ity owner or operator may designate as its Class B operator a third party (i.e. an individual who is an independent contractor or consultant and is not affiliated with the facility owner or operator) only if that individual is (in accordance with Chapter 334, Subchapter I and with Chapter 30, Subchapter I of this title (relating to Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; and Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration, respectively)) also a licensed UST on-site supervisor [~~On-Site Supervisor~~] who holds a current "A" or "A/B" license and who either is, or is employed by, a registered UST contractor [~~Contractor~~]. However, designation of an independent or not affiliated Class B operator in this manner does not also entitle that individual to certification as a Class A operator for a facility.

(3) Class C operator [~~Operator~~].

(A) Function. A Class C operator of a UST facility is an individual designated by the UST system owner who typically controls the dispensing of fuel at the facility and is responsible for initial response to alarms, releases, spills, overfills or threats to the public or to the environment.

(B) Training. Class C operators must be trained in both general and facility-specific emergency response procedures, such as: the operation of emergency shut-off equipment; the initial response procedures following system alarm warnings; the appropriate first response actions to releases, spills, or overfills; and the notification procedures to emergency responders and to the designated Class A and Class B operators of a UST facility.

*§334.603. Acceptable Operator Training and Certification Processes.*

(a) Training. Operator training must fulfill the training requirements described for each class of operator in §334.602 of this title (relating to Designation and Training of Classes of Operators). The following is a list of acceptable approaches to meet the operator training requirements.

(1) Acceptable training [~~Training~~] for Class A and Class B operators. Class A and Class B operators must complete a Texas Commission on Environmental Quality (TCEQ) approved operator training course or process that includes the information listed in §334.602(b)(1) or (2) of this title, respectively. Courses or processes may include in-person or on-line training performed by, contracted for, or approved by the TCEQ, and must include an evaluation of operator knowledge through testing, practical demonstration, or other tools deemed acceptable by the TCEQ. In order for a non-contracted provider to be approved by the agency, the provider of a training course or process must be sponsored by an association or industry organization recognized nationwide or statewide with regard to its affiliation with regulated petroleum underground storage tank (UST) systems. All providers will also be required to provide training documentation, including on-going maintenance of records of certified operators. Those records will be required to be accessible to the agency on an on-going basis.

(2) Acceptable training [~~Training~~] for Class C operators [~~Operators~~].

(A) Class B operators must provide training or ensure that the UST facility's Class C operators otherwise complete training in emergency procedures that includes the information listed in §334.602(b)(3) of this title. Class C operator training programs may include in-class, hands-on, on-line, or any other training format deemed acceptable by the Class B operator.

(B) Class A and Class B operators must ensure that site-specific emergency procedures are maintained in an easily accessible location at the UST facility which is immediately available to the Class C operator, and that site-specific notices that include the location of emergency shut-off devices and appropriate emergency contact telephone numbers are posted in a prominent area at the UST facility that is easily visible to the Class C operator. For the purposes of this subsection, the phrase "easily accessible location" means located in a place and manner that allows a Class C operator [~~Operator~~] quick and immediate access to site-specific emergency procedures.

(b) Certification. Operators are considered certified operators after successfully completing one of the training processes listed in subsection (a) of this section.

(1) Class A and Class B operators [~~Operators~~]. Approved training providers must provide verification to all Class A and Class B operators who have successfully completed training, in the form of a written or printable electronic training certificate stating the classification and the date it was obtained. Owners and operators must ensure that training certificates are maintained at each facility, with copies of initial or new certificates provided to the TCEQ at the time that annual self-certification [~~self certification~~] is required for that facility.

(2) Class C operators [~~Operators~~]. A designated Class B operator for a given facility must provide the facility owner or operator with signed and dated written verification in the form of a list of all Class C operators who have been trained for that facility, which includes the date of that training. Owners and operators must ensure that a current and correct list of trained Class C operators is maintained at each facility.

*§334.605. Operator Training Frequency.*

(a) Certified Class A and Class B operators [~~Operators~~] must be re-trained in accordance with §334.602 and §334.603 of this title (relating to Designation and Training of Classes of Operators; and Acceptable Operator Training and Certification Processes, respectively) within three years of their last training date.

(b) Certified Class C operators must be re-trained in accordance with §334.602 and §334.603 of this title within three years of their last training date. In addition, Class C operator training is only applicable at the specific facility for which the training was provided.

(c) If an underground storage tank (UST) facility receives a notice of violation and the agency determines that the UST facility is in significant noncompliance, the designated Class B operators for that UST facility, must attend either a Texas Commission on Environmental Quality (TCEQ) approved compliance class that addresses the noted noncompliant areas or an acceptable operator training course as specified in §334.603 of this title, within the time frame specified by the TCEQ for that violation. Class B operators are not, however, required to attend such training more than once every 12 months, regardless of the number of their designated facilities found in violation. (For the purposes of this subchapter, "significant noncompliance" is defined as the failure to provide one or more of the following in accordance with applicable TCEQ rule or Environmental Protection Agency Significant Operational Compliance guidelines: release detection, spill/overfill prevention, corrosion protection, or financial assurance.)

(d) Notwithstanding the three-year re-training requirement in subsection (a) of this section, certified Class A and Class B operators must be re-trained by April 1, 2019, with a course submitted to and approved by TCEQ after April 1, 2018.

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# TITLE 43. TRANSPORTATION

## PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

### CHAPTER 217. VEHICLE TITLES AND REGISTRATION

### SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

**43 TAC §§217.43, 217.45, 217.46**

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.43, Military Specialty License Plates, §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices, and §217.46, Commercial Vehicle Registration.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to stagger license plate expiration dates to coincide with programming changes to the department's Registration and Title System (RTS).

Proposed amendments to §217.43 delete the March 31 expiration date for Congressional Medal of Honor license plates and make the registration period for all military specialty license plates valid for 12 months from the month of issuance.

Proposed amendments to §217.45 add "Fertilizer" to the list of specialty license plates for which the vehicle is issued one plate. "Golf Cart" and "Package Delivery" are added to the categories of plates for which personalized plates are not available and that are non-transferable between vehicles. Also, amendments delete the March expiration date for Cotton Vehicle and Disaster Relief Plates, the June expiration date for Honorary Consul license plates, and the September expiration date for Log Loader license plates. With these amendments, the length of validation for these license plates will be 12 months from the month of issuance.

Other proposed amendments to §217.45(d)(2) delete the language regarding a five-year registration period for Antique Vehicles, Antique Motorcycle license plates, Antique tabs, and registration numbers; the seven year registration period for Foreign Organization license plates and registration numbers; and the December expiration dates for certain United States and state officials and federal, state, and county judges as this language is duplicative of statute and unnecessary for the rule. The proposed amendments add references to the statutory citations for those plates and registration periods.

A proposed amendment also deletes the requirement that State Official license plates for members of the Railroad Commission are assigned first to the presiding officer followed by the remaining members based on their seniority and adds that the license plate fee for a package delivery license plate is to be paid on an annual basis.

Proposed amendments to §217.46 delete the March expiration for City Bus license plates, combination license plates unless the vehicle with a combination license plate is part of a fleet under §217.54, and Motor Bus license plates. Also, proposed amendments hyphenate truck-tractor to be consistent with statute. An amendment also corrects a grammatical error in the rule.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jeremiah Kuntz, Director of the Title and Registration Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be convenience for specialty license plate owners regarding plate expiration dates and consistency with statute. There are no anticipated economic costs for persons required to comply with the proposed amendments. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The department has determined that during the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendment does not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on January 2, 2018.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department

of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504, and Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 502 and 504.

*§217.43. Military Specialty License Plates.*

(a) Purpose and Scope. Transportation Code, Chapter 504 authorizes the department to issue military specialty license plates. This section prescribes the policies and procedures for the application, issuance, and renewal of military specialty license plates.

(b) Classification and fees. The department will issue specialty plates for the military and charge fees as authorized by Transportation Code, §504.202 and Chapter 504, Subchapter D.

(c) Application. Applications for military specialty license plates must be made to the department and include evidence of eligibility. The evidence of eligibility may include, but is not limited to:

(1) an official document issued by a governmental entity;

(2) a letter issued by a governmental entity on that agency's letterhead;

(3) discharge papers;

(4) a death certificate; or

(5) an identification card issued by any branch of the military under the jurisdiction of the United States Department of Defense or the United States Department of Homeland Security indicating that the member is retired.

(d) Period. Military specialty license plates shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration and [~~The registration for Congressional Medal of Honor license plates expires each March 31. All other specialty plates for the military~~] may be replaced in accordance with §217.32 of this title (relating to Replacement of License Plates, Symbols, Tabs, and Other Devices).

(e) Assignment and Transfer. Military plates may not be assigned and may only be transferred to another vehicle owned by the same vehicle owner.

(f) Applicability. Section 217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) applies to military plates, symbols, tabs, or other devices as to:

(1) what is considered one set of plates per vehicle as determined by vehicle type;

(2) issuance of validation tabs and insignia;

(3) stolen or replaced plates;

(4) payment of other applicable fees;

(5) personalization, except that Congressional Medal of Honor plates may not be personalized;

(6) renewal, except that the owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department;

(7) refunds; and

(8) expiration.

*§217.45. Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551 charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

*(i)* an official document issued by a governmental entity; or

*(ii)* a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) County Judge;

(B) Federal Administrative Law Judge;

(C) State Judge;

(D) State Official;

(E) U.S. Congress--House;

(F) U.S. Congress--Senate; and

(G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

*(i)* the name and address of the person who will receive the plates; and

*(ii)* the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

*(i)* the license plate's original use was restricted by statute to another vehicle type;

*(ii)* the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

*(iii)* the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

*(i)* Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

*(ii)* Classic Travel Trailer;

*(iii)* Rental Trailer;

*(iv)* Travel Trailer;

*(v)* Cotton Vehicle;

*(vi)* Disaster Relief;

*(vii)* Forestry Vehicle;

*(viii)* Golf Cart;

*(ix)* Log Loader;

*(x)* Military Vehicle; [~~and~~]

*(xi)* Package Delivery Vehicle; and[~~.~~]

*(xii)* Fertilizer.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

*(i)* conflicts with the department's current or proposed regular license plate numbering system;

*(ii)* would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

*(iii)* is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

*(i)* Amateur Radio (other than the official call letters of the vehicle owner);

*(ii)* Antique Motorcycle;

*(iii)* Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

*(iv)* Apportioned;

*(v)* Cotton Vehicle;

*(vi)* Disaster Relief;

*(vii)* Farm Trailer (except Go Texan II);

*(viii)* Farm Truck (except Go Texan II);

*(ix)* Farm Truck Tractor (except Go Texan II);

*(x)* Fertilizer;

*(xi)* Forestry Vehicle;

*(xii)* Log Loader;

*(xiii)* Machinery;

*(xiv)* Permit;

*(xv)* Rental Trailer;

*(xvi)* Soil Conservation; [~~and~~]

*(xvii)* Texas Guard;[~~.~~]

*(xviii)* Golf Cart; and

*(xix)* Package Delivery Vehicle.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. Except as provided by Transportation Code, §§504.401, 504.4061, or 504.502, [~~With the following exceptions,~~] all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

[~~(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.~~]

[~~(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.~~]

[~~(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.~~]

[~~(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.~~]

[~~(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.~~]

[~~(F) December expiration dates. The registration for the following license plates expires each December 31:~~]

*[~~(i)~~* ~~County Judge;~~]

*[~~(ii)~~* ~~Federal Administrative Law Judge;~~]

*[~~(iii)~~* ~~State Judge;~~]

*[~~(iv)~~* ~~State Official;~~]

*[~~(v)~~* ~~U.S. Congress--House;~~]

*[~~(vi)~~* ~~U.S. Congress--Senate; and~~]

*[~~(vii)~~* ~~U.S. Judge.~~]

[~~(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.~~]

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

*(i)* County Judge;

*(ii)* Federal Administrative Law Judge;

*(iii)* State Judge;

*(iv)* State Official;

*(v)* U.S. Congress--House;

*(vi)* U.S. Congress--Senate; and

*(vii)* U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration

date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

*(i)* is titled or leased in the owner's name; and

*(ii)* meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

*(i)* Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

*(ii)* Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

*(iii)* Forestry Vehicle license plates; [~~and~~]

*(iv)* Log Loader license plates;[~~.~~]

*(v)* Golf Cart license plates; and

*(vi)* Package Delivery Vehicle license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state

legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission [~~Presiding Officer followed by the remaining members based on their seniority~~];

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

*(i)* Judges of the Fifth Circuit Court of Appeals;

*(ii)* Judges of the United States District Courts;

*(iii)* United States Bankruptcy Judges; and

*(iv)* United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

*(i)* Appellate District Courts;

*(ii)* Presiding Judges of Administrative Regions;

*(iii)* Judicial District Courts;

*(iv)* Criminal District Courts; and

*(v)* Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the board will return the application as incomplete unless the board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

*(i)* whether the design appears to meet the legibility and reflectivity standards established by the department;

*(ii)* whether the design meets the standards established by the department for uniqueness;

*(iii)* other information provided during the application process;

*(iv)* the criteria designated in §217.27 as applied to the design; and

*(v)* whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(7) Final approval.

(A) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the board if:

*(i)* the applicant has additional, required documentation; or

*(ii)* the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is $10.

(k) Package delivery vehicle.

(1) A county tax assessor-collector may issue package delivery license plates as long as the requirements under Transportation Code, §§551.453, 551.454, and 551.455 are met.

(2) The license plate fee for a package delivery license plate is $25 to be paid on an annual basis.

*§217.46. Commercial Vehicle Registration.*

(a) Eligibility. A motor vehicle, other than a motorcycle, designed or used primarily for the transportation of property, including any passenger car that has been reconstructed to be used, and is being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mail[~~mails~~], must be registered as a commercial vehicle.

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination, Motor Bus, or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §217.56 of this title (relating to Registration Reciprocity Agreements).

(2) City bus license plates. A street or suburban bus shall be registered with license plates bearing the legend "City Bus."

(3) Combination license plates.

(A) Specifications. A truck or truck-tractor [~~truck tractor~~] with a gross weight in excess of 10,000 pounds used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, may be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination, but not less than 18,000 pounds. Only one combination license plate is required and must be displayed on the front of the truck or truck-tractor [~~truck tractor~~]. When displaying a combination license plate, a truck or truck-tractor [~~truck tractor~~] is not restricted to pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles may not be registered in combination:

*(i)* trucks or truck-tractors [~~truck tractors~~] having a gross weight of less than 10,000 pounds or trucks or truck-tractors [~~truck tractors~~] to be used exclusively in combination with semitrailers having gross weights not exceeding 6,000 pounds;

*(ii)* semitrailers with gross weights of 6,000 pounds or less, or semitrailers that are to be operated exclusively with trucks or truck-tractors [~~truck tractors~~] having gross weight of less than 10,000 pounds;

*(iii)* trucks or truck-tractors [~~truck tractors~~] used exclusively in combination with semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

*(iv)* trucks or truck-tractors [~~truck tractors~~] used exclusively in combination with travel trailers and manufactured housing;

*(v)* trucks or truck-tractors [~~truck tractors~~] to be registered with Farm Truck or Farm Truck Tractor license plates;

*(vi)* trucks or truck-tractors [~~truck tractors~~] and semitrailers to be registered with disaster relief license plates;

*(vii)* trucks or truck-tractors [~~truck tractors~~] and semitrailers to be registered with Soil Conservation license plates;

*(viii)* trucks or truck-tractors [~~truck tractors~~] and semitrailers to be registered with U.S. Government license plates or Exempt license plates issued by the State of Texas; and

*(ix)* vehicles that are to be issued temporary permits, such as 72-Hour Permits, 144-Hour Permits, One Trip Permits, or 30-Day Permits in accordance with Transportation Code, §502.094 and §502.095.

(B) Converted semitrailers. Semitrailers that are converted to full trailers by means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to the combination and token trailer registration requirements.

(C) Axle assemblies. Various types of axle assemblies that are specially designed for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load capabilities of such vehicles or combinations.

*(i)* Auxiliary axle assemblies such as trailer axle converters, jeep axles, and drag axles, which are used in conjunction with truck-tractor [~~truck tractor~~] and semitrailer combinations, are not required to be registered; however, the additional weight that is acquired by the use of such axle assemblies must be included in the combined gross weight of the combination.

*(ii)* Ready-mixed concrete trucks that have an auxiliary axle assembly installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight that includes the axle assembly.

(D) Exchange of Combination license plates. Combination license plates shall not be exchanged for another type of registration during the registration year, except that:

*(i)* if a major permanent reconstruction change occurs, Combination license plates may be exchanged for Truck license plates, provided that a corrected title is applied for;

*(ii)* if the department initially issues Combination license plates in error, the plates will be exchanged for license plates of the proper classification;

*(iii)* if the department initially issues Truck or Trailer license plates in error to vehicles that should have been registered in combination, such plates will be exchanged for Combination and Token Trailer license plates; or

*(iv)* if a Texas apportioned carrier acquires a combination license power unit, the Combination license plates will be exchanged for Apportioned license plates.

(4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates in accordance with Transportation Code, §504.505 and §217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license plates in accordance with Transportation Code, §504.507 and §217.45 of this title.

(6) In Transit license plates. The department may issue an In Transit license plate annually to any person, firm, or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported, delivered, or moved under its own power in accordance with this paragraph must display an In Transit license plate in accordance with Transportation Code, §503.035.

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles that transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers that are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck-tractor [~~truck tractor~~] that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507), Combination (in accordance with Transportation Code, §502.255), or Apportioned (in accordance with Transportation Code, §502.091) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.094 and §623.011.

(C) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(D) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate unless the Texas Department of Licensing and Regulation has issued a permit for the tow truck under Occupations Code, Chapter 2308, Subchapter C.

(c) Application for commercial vehicle registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) motor number or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Transportation Code, §502.055.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should present a weight certificate from a public weight scale or the Department of Public Safety.

(3) Gross weight.

(A) Determination of Weight. The combined gross weight of vehicles registering for combination license plates shall be determined by the empty weight of the truck or truck-tractor [~~truck tractor~~] combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in combination therewith, plus the heaviest net load to be carried on such combination during the motor vehicle registration year, provided that in no case may the combined gross weight be less than 18,000 pounds.

(B) Restrictions. The following restrictions apply to combined gross weights.

*(i)* After a truck or truck-tractor [~~truck tractor~~] is registered for a combined gross weight, such weight cannot be lowered at any subsequent date during the registration year. The owner may, however, lower the gross weight when registering the vehicle for the following registration year, provided that the registered combined gross weight is sufficient to cover the heaviest load to be transported during the year and provided that the combined gross weight is not less than 18,000 pounds.

*(ii)* A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with Transportation Code, §623.011.

(4) Motor number or serial number. Ownership must be established by a court order if no motor or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

(A) prescribed registration fees;

(B) prescribed local fees or other fees that are collected in conjunction with registering a vehicle;

(C) evidence of financial responsibility as required by Transportation Code, §502.046 if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), proof of financial responsibility may be in the form of a registration listing or an international stamp indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration);

(D) an application for Texas Title in accordance with Subchapter A of this chapter, or other proof of ownership;

(E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

(F) an original or certified copy of the current permit issued in accordance with Occupations Code, Chapter 2308, Subchapter C, if application is being made for Tow Truck license plates; and

(G) other documents or fees required by law.

(6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist of an original or photocopy of the Schedule 1 portion of Form 2290 receipted by the Internal Revenue Service (IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the IRS, along with a photocopy of the front and back of the canceled check covering the payment to the IRS.

(7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use Tax is not required:

(A) for new vehicles when an application for title and registration is supported by a Manufacturer's Certificate of Origin;

(B) on used vehicles when an application for title and registration is filed within 60 days from the date of transfer to the applicant as reflected on the assigned title, except that proof of payment will be required when an application for Texas title and registration is accompanied by an out-of-state title that is recorded in the name of the applicant;

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operating without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. If a fleet under §217.54 of this title (relating to Registration of Fleet Vehicles) contains a vehicle with a combination license plate, the established annual registration period for the fleet is April 1st through March 31st. [~~The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:~~]

~~*[(i)* City Bus license plates;]~~

~~*[(ii)* Combination license plates; and]~~

~~*[(iii)* Motor Bus license plates.]~~

(B) Five-year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

*(i)* Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

*(ii)* Five-year Token Trailer license plates, available to owners of semitrailers to be used in combination with truck-tractors displaying Apportioned or Combination license plates.

(2) License Plate Renewal Notice. The department will mail a License Plate Renewal Notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices should be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) statutorily prescribed registration renewal fees;

(B) prescribed local fees or other fees that are collected in conjunction with registration renewal;

(C) evidence of financial responsibility as required by Transportation Code, §502.046; and

(D) other prescribed documents or fees.

(4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of commercial vehicle license plates.

(1) Transfer between persons. With the exceptions noted in paragraph (3) of this subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred, application for transfer of such license plates shall be made with the county tax assessor-collector in the county in which the purchaser resides. If the purchaser does not intend to use the vehicle in a manner that would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the appropriate license plates.

(2) Transfer between vehicles. Commercial vehicle license plates are non-transferable between vehicles.

(3) Transfer of Apportioned and Tow Truck license plates. Apportioned and Tow Truck license plates are non-transferable between persons or vehicles, and become void if the vehicle to which the license plates were issued is sold.

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates. An owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

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 November 16, 2017.

TRD-201704639
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 31, 2017
For further information, please call: (512) 465-5665

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

**22 TAC §535.65**

The Texas Real Estate Commission withdraws the proposed amended §535.65 which appeared in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4232).

Filed with the Office of the Secretary of State on November 16, 2017.

TRD-201704664
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: November 16, 2017
For further information, please call: (512) 936-3092

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### CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

**22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.55, 537.56**

The Texas Real Estate Commission withdraws the proposed amended §§537.20, 537.28, 537.30 - 537.32, 537.37, and new §537.55 and §537.56 which appeared in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4244).

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TRD-201704665
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: November 16, 2017
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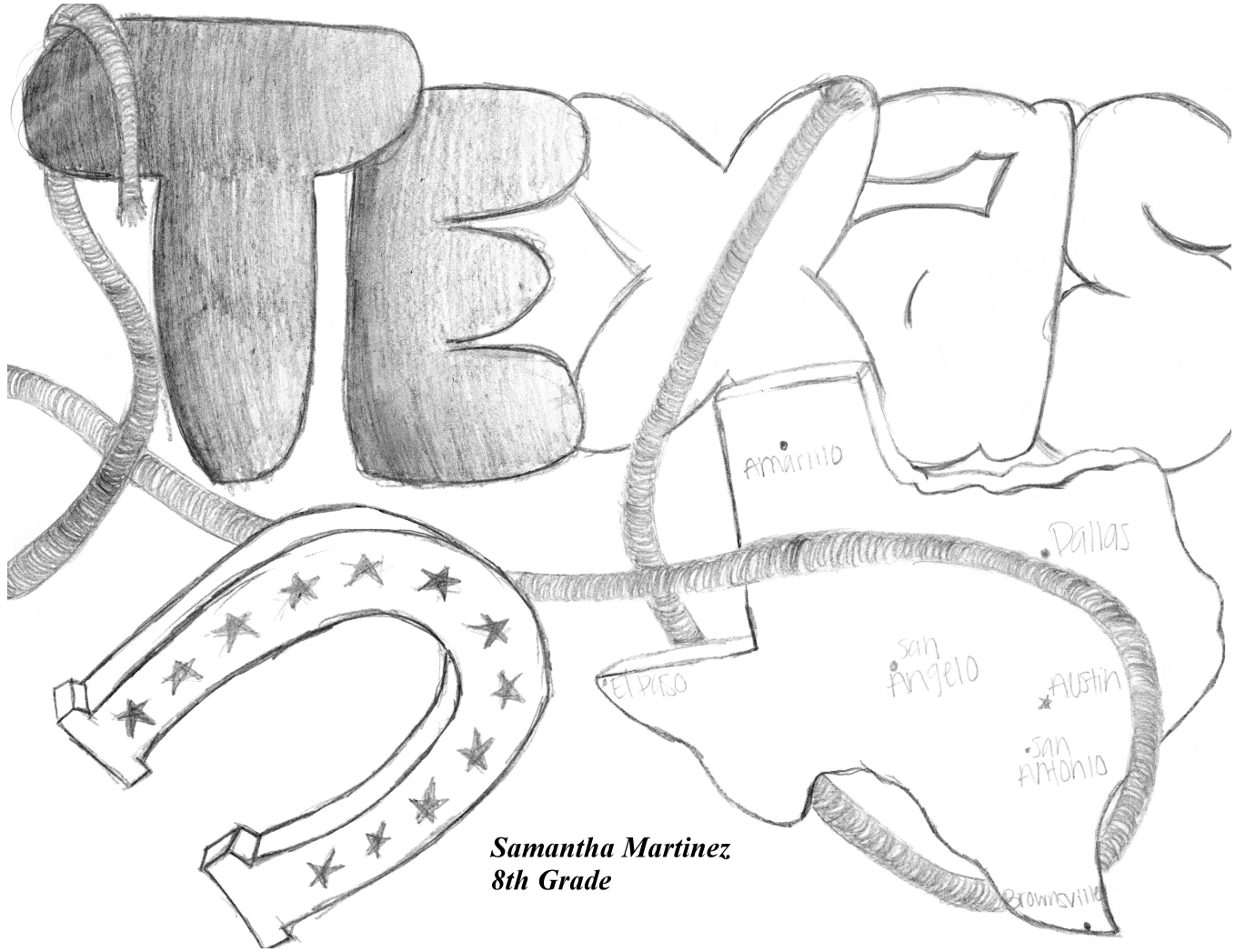


***Samantha Martinez***
***8th Grade***

# 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 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the Department) adopts the repeal of Title 4, Part 1, Chapter 18, Subchapter D, §18.300, pertaining to Adoption by Reference; Subchapter E, §18.400, pertaining to Adoption by Reference; Subchapter F, Division 2, §18.662, pertaining to Noncompliance Procedure for Certified Operations; Subchapter F, Division 3, §18.671 and §18.672, pertaining to Exclusion from Organic Sale, and Emergency Pest Disease or Treatment, respectively; and Subchapter F, Division 5, §18.704 and §18.706, pertaining to Transitional Certificates, and Transactional Certification Requirements and Logo, respectively. Additionally, the Department proposes amendments to Subchapter F, Division 3, §18.670, pertaining to Adoption by Reference; and Subchapter F, Division 5, §18.702, pertaining to Fee Schedule. The Department proposes new Subchapter D, §18.300, pertaining to Transitional Certification Requirements; new Subchapter E, §18.400, pertaining to Transfer of Certification; Subchapter F, Division 2, §18.662, pertaining to Noncompliance Procedure for Transitional Operations; and Subchapter F, Division 3, §18.671, pertaining to Unannounced Inspections. The adoption of §18.671 is made with non-substantive changes to the proposal published in the October 13, 2017 issue of the *Texas Register* (42 TexReg 5608).

The adopted changes were made to update regulations necessary for the operation of the organic and transitional certification programs, including compliance and inspection procedures. The changes remove references to state or Federal regulations which are obsolete or conflict with current rule. The fee schedule is simplified for clarification and presentation in a more concise manner.

No comments were received on the proposal.

### SUBCHAPTER D. LABELS, LABELING, AND MARKET INFORMATION

#### 4 TAC §18.300

The repeal is adopted pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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 November 17, 2017.

TRD-201704695
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: December 7, 2017
Proposal publication date: October 13, 2017
For further information, please call: (512) 463-4075

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#### 4 TAC §18.300

The adoption is made pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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) 463-4075

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## SUBCHAPTER E. CERTIFICATION

### 4 TAC §18.400

The repeal is adopted pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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### 4 TAC §18.400

The adoption is made pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. ADMINISTRATIVE

## DIVISION 2. COMPLIANCE

### 4 TAC §18.662

The repeal is adopted pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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) 463-4075

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### 4 TAC §18.662

The adoption is made pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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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Jessica Escobar
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For further information, please call: (512) 463-4075

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## DIVISION 3. INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

**4 TAC §18.670, §18.671**

The adoption is made pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

*§18.671. Unannounced Inspections.*

All currently certified operations and all operations in application status for certification are subject to unannounced inspections. TDA will conduct unannounced inspections pursuant to 7 CFR Part 205, §205.403 and §205.670.

(1) Operations will not incur a fee when selected by TDA for an unannounced inspection. However, if an operation expressly requests an unannounced inspection in addition to their annual routine inspection, a re-inspection fee will be incurred by the operation and the only stipulation that can be made by the certified operation is selection of a 20 day time period in which the inspection will occur.

(2) An unannounced inspection will not include prior notification of the inspector's arrival. However, certain conditions, including but not limited to distance of travel by the TDA inspector, frequency of personnel at operation, and biosecurity issues, which may make it impossible to conduct an unannounced inspection of the operation without prior notification. In such cases, a TDA employee may contact the operation up to 4 hours prior to arriving onsite to ensure that appropriate representatives are present.

(3) The TDA inspector shall disclose to the operation the reason that the operation was chosen for the unannounced inspection prior to the start of the inspection.

(4) Criteria for conducting a risk-based unannounced inspection may include, but is not limited to:

(A) Random selection by the TDA;

(B) Previously identified and/or outstanding noncompliance issues;

(C) Investigations and/or responding to complaints;

(D) Organic and non-organic production or handling, which includes visually indistinguishable varieties or processed products;

(E) Risk of an organic product coming into contact with a prohibited substance applied to adjoining land use;

(F) Risk of an organic product or ingredient coming into contact with a prohibited substance or commingling with a nonorganic product during handling; and

(G) Complexity of operation.

(5) Unannounced inspections may fulfill the requirements for annual on-site monitoring inspections of certified organic operations, required by 7 CFR Part 205, §205.403, only if the inspector is able to conduct a full inspection of the operation as required by that section.

(6) Unannounced inspections may be limited in scope, depth, and breadth, and may cover only certain aspects of the operation, such as fields/units/parcels, facilities, products, handling activities, etc.

(7) Inspectors may conduct sampling pursuant to §18.670 of this chapter and 7 CFR Part 205, §205.670 during an unannounced inspection. Operations will not incur a fee for any samples collected by a TDA Organic Inspector unless the collection of one or more samples is expressly requested by the operation.

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) 463-4075

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**4 TAC §18.671, §18.672**

The repeal is adopted pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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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Effective date: December 7, 2017
Proposal publication date: October 13, 2017
For further information, please call: (512) 463-4075

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## DIVISION 5. MISCELLANEOUS PROVISIONS

**4 TAC §18.702**

The adoption is made pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees

for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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 November 17, 2017.

TRD-201704705
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: December 7, 2017
Proposal publication date: October 13, 2017
For further information, please call: (512) 463-4075

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**4 TAC §18.704, §18.706**

The repeal is adopted pursuant to §18.002 of the Texas Agriculture Code (the Code), which provides the Department with the authority to adopt rules for the certification of organic products; §18.006 of the Code, which requires the Department to set fees for the organic certification program in amounts that enable recovery of the costs of administering the program; and §12.016 of the Code, which provides the Department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 18.

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 November 17, 2017.

TRD-201704700
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: December 7, 2017
Proposal publication date: October 13, 2017
For further information, please call: (512) 463-4075

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 23. SINGLE FAMILY HOME PROGRAM

The Texas Department of Housing and Community Affairs (the "Department") adopts the amendments to 10 TAC Chapter 23, Subchapter B, §23.25, concerning General Threshold and Selection Criteria, and Subchapter F, §23.61, concerning Tenant-Based Rental Assistance (TBRA) General Requirements, without changes, as published in the September 22, 2017, issue of the *Texas Register* (42 TexReg 4929) and will not be republished.

REASONED JUSTIFICATION: The purpose of amending the State HOME Investment Partnerships Program ("HOME") Rule under Subchapter B is to require applicants for HOME Program funds to establish intent to apply for funding subject to the terms and conditions set forth at time of application receipt. Currently, the threshold requirements state that a resolution from the governing board of the applicant must be dated no later than 6 months from the date of application submission; proposed amendments to the rule would require the applicant to more specifically identify the fund source and, if applicable, Notice of Funding Availability under which funds are requested by the applicant. The purpose of amending the HOME Rule under Subchapter F is to require that units selected by tenants for occupancy under the Tenant-Based Rental Assistance ("TBRA") program are two-fold. First, an amendment is proposed to ensure that units selected for rental by an assisted household are not owned by members of the assisted household's immediate family, with an exception for units that have unique accessibility features for persons with disabilities that are not readily available in the service area. This amendment will more closely align the HOME Rule with the requirements of the Section 8 Housing Choice Voucher Program, allowing tenants a more seamless transition between temporary HOME assistance and more permanent assistance offered under the Section 8 Housing Choice Voucher Program. Second, an additional amendment is proposed to ensure that administrators of the HOME Program comply with requirements to conduct a rent-reasonableness analysis for each unit to be occupied by a HOME assisted household.

The Department accepted public comment between September 22, 2017, and October 31, 2017. No comments were received concerning the amendments.

The Board approved the final order adopting the amendments on November 9, 2017.

### SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

**10 TAC §23.25**

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The adopted amendment affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2017.

TRD-201704609
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 6, 2017
Proposal publication date: September 22, 2017
For further information, please call: (512) 475-0908

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## SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE PROGRAM

### 10 TAC §23.61

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The adopted amendment affects no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2017.

TRD-201704610
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 6, 2017
Proposal publication date: September 22, 2017
For further information, please call: (512) 475-0908

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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 §61.1023

The Texas Education Agency adopts the repeal of §61.1023, concerning community and student engagement. The repeal is adopted without changes to the proposed text as published in the September 29, 2017, issue of the *Texas Register* (42 TexReg 5200) and will not be republished. The adopted repeal is necessary because the statutory authority for the rule was repealed.

REASONED JUSTIFICATION. House Bill (HB) 5, 83rd Texas Legislature, 2013, added the Texas Education Code (TEC), §39.0545, establishing community and student engagement indicators and requiring districts to report to TEA self-assigned district and campus ratings in eight specific categories. The commissioner adopted 19 TAC §61.1023 effective June 26, 2014, to provide instructions for the required reporting.

HB 2804, 84th Texas Legislature, 2015, added the TEC, §39.0546, requiring that community and student engagement ratings be part of the state academic accountability system. The TEA amended 19 TAC §61.1023 effective June 8, 2017, to provide instructions for reporting these ratings.

HB 22, 85th Texas Legislature, Regular Session, 2017, repealed the TEC, §39.0545 and §39.0546. The adopted repeal of 19 TAC §61.1023 is necessary because the statutory authority for the rule has been repealed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began September 29, 2017, and ended October 30, 2017. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §39.0545, as repealed by House Bill (HB) 22, 85th Texas Legislature, Regular Session, 2017, which required each school district to annually evaluate its performance and the performance of each of its campuses in the area of community and student engagement using eight specific categories and also required each district to report to the Texas Education Agency (TEA) the rating of Exemplary, Recognized, Acceptable, or *Unacceptable* that it had assigned to itself and to each of its campuses for overall performance in community and student engagement and for each of the eight categories; and TEC, §39.0546, as repealed by HB 22, 85th Texas Legislature, Regular Session, 2017, which required each school district and campus to annually select three of the eight categories in community and student engagement on which it would rate itself for the purpose of academic accountability ratings. It also required each district and campus to report to TEA the rating of *A, B, C, D,* or *F* that it had assigned to itself for overall performance in community and student engagement and for each of the three categories.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §39.0545 and §39.0546, as repealed by House Bill 22, 85th Texas Legislature, Regular Session, 2017.

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 November 15, 2017.

TRD-201704597
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 5, 2017
Proposal publication date: September 29, 2017
For further information, please call: (512) 475-1497

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## CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

### 19 TAC §62.1071

The Texas Education Agency amends §62.1071, concerning the equalized wealth level. The amendment is adopted without changes to the text as published in the August 25, 2017 issue of the *Texas Register* (42 TexReg 4222) and will not be republished. The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas

Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet. The amendment adopts as a part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017.*

REASONED JUSTIFICATION. The TEA has adopted the procedures contained in each yearly manual for districts subject to wealth equalization as part of the TAC since 2011. The earlier version of 19 TAC §62.1071, Administration of Wealth Equalization, adopted effective June 11, 1998, and subsequently amended several times, was repealed effective May 9, 2011, and replaced with the wealth equalization manual to remove outdated and obsolete provisions from rule.

The amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017* as Figure: 19 TAC §62.1071(a). The manual replaces an earlier version published as proposed in the April 21, 2017 issue of the *Texas Register.* The earlier version of the manual was withdrawn.

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

This rule is being adopted under the authority of the TEC, §41.013. Pursuant to the TEC, §41.013(c), Texas Government Code, Chapter 2001, does not apply to a decision of the commissioner under the TEC, Chapter 41. The Secretary of State is required to publish any rules adopted under the TEC, Chapter 41, in the *Texas Register* and the Texas Administrative Code upon the request of the commissioner, pursuant to the TEC, §41.013(d). Use of forms and procedures commonly utilized under the Administrative Procedure Act provides a convenience to the general public and administrative agencies. Their use does not constitute a waiver of the TEC, §41.013(c), or an election to apply the requirements in Texas Government Code, Chapter 2001, to this rule adoption.

Two changes to the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year, Revised April 2017* from the *Manual for Districts Subject to Wealth Equalization 2016-2017 School Year* are as follows.

*Administrative Procedures*

TEC, §41.001, requires a district's designation under this chapter to be determined based on the taxable value of property, as determined under Texas Government Code, Chapter 403, Subchapter M. The language incorrectly referring to property values used for state funding purposes under the TEC, Chapter 42, is repealed.

*Taxation*

The subsection titled, "What if our district offers an optional homestead exemption?" is repealed because the TEC, §42.2522(a), only applies to the TEC, Chapter 42.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period began August 25, 2017, and ended September 25, 2017, and a public hearing was held on August 31, 2017. Following is a summary of the public comment received and corresponding agency response regarding the amendment to 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, §62.1071, Manual for Districts Subject to Wealth Equalization.

Comment. Thompson & Horton, LLP commented in favor of the amendment.

Agency Response. The agency agrees.

STATUTORY AUTHORITY. The amendment is authorized under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41, Equalized Wealth Level; TEC, §41.013(c), which provides that Texas Government Code, Chapter 2001, is inapplicable to decisions of the commissioner under TEC, Chapter 41; and TEC, §41.013(d), which authorizes the commissioner to request the Secretary of State to publish rules adopted under TEC, Chapter 41.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §41.006 and §41.013(c) and (d).

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 November 15, 2017.

TRD-201704598
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 5, 2017
Proposal publication date: August 25, 2017
For further information, please call: (512) 475-1497

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# CHAPTER 101. ASSESSMENT

## SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

## DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

### 19 TAC §101.3022

The Texas Education Agency adopts an amendment to §101.3022, concerning assessment requirements for graduation. The amendment is adopted without changes to the proposed text as published in the September 15, 2017 issue of the *Texas Register* (42 TexReg 4749) and will not be republished. The adopted amendment modifies the rule to reflect changes in statute made by Senate Bill (SB) 463, 85th Texas Legislature, Regular Session, 2017, and removes dates that have passed.

REASONED JUSTIFICATION. Section 101.3022 requires students to achieve satisfactory performance on the end-of-course

(EOC) assessments listed in the Texas Education Code (TEC), §39.023(c), to be eligible to receive a high school diploma. The rule also specifies an exception, as authorized by the TEC, §28.0258, that allows a student who has failed to achieve the EOC assessment graduation requirements for no more than two courses to receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee. The rule previously stated that the individual graduation committee provision applies only to students in the 11th or 12th grade in the 2014-2015, 2015-2016, or 2016-2017 school years and that the provision expires on September 1, 2017.

SB 463, 85th Texas Legislature, Regular Session, 2017, amended the TEC, §28.0258, to extend the expiration date of the provision that allows eligible students to qualify to graduate by means of an individual graduation committee to September 1, 2019.

To implement SB 463, the adopted amendment modifies the rule by extending the expiration date to September 1, 2019. In addition, the adopted amendment removes the outdated language that limited the individual graduation committee provision to students in the 11th or 12th grade in the 2014-2015, 2015-2016, or 2016-2017 school years.

Technical edits were also made.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began September 15, 2017, and ended October 16, 2017. Following is a summary of the public comment received and corresponding agency response regarding the proposed amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 2, Participation and Assessment Requirements for Graduation, §101.3022, Assessment Requirements for Graduation.

Comment: A representative from Northside ISD expressed support for the proposed amendment, noting that extending the expiration date allows districts to continue determining whether eligible students who struggle with passing the end-of-course assessments qualify to graduate.

Agency Response: The agency agrees. SB 463 extends the expiration date of the provision that allows eligible students to qualify to graduate by means of an individual graduation committee.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §28.0258, as amended by Senate Bill (SB) 463, 85th Texas Legislature, Regular Session, 2017, which establishes an individual graduation committee to determine if a student who has failed to comply with the end-of-course (EOC) assessment instrument performance requirements in the TEC, §39.025, for not more than two courses is qualified to graduate. Subsection (k) requires the commissioner to adopt rules to implement the section. The section expires September 1, 2019; and the TEC, §39.025(a-2), as amended by SB 463, 85th Texas Legislature, Regular Session, 2017, which allows a student who has failed to perform satisfactorily on EOC assessment instruments to receive a high school diploma if the student qualifies for graduation under the TEC, §28.0258. The subsection expires September 1, 2019.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §28.0258 and §39.025, as amended by Senate Bill 463, 85th Texas Legislature, Regular Session, 2017.

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 November 15, 2017.

TRD-201704600
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 5, 2017
Proposal publication date: September 15, 2017
For further information, please call: (512) 475-1497

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# TITLE 22. EXAMINING BOARDS

## PART 14. TEXAS OPTOMETRY BOARD

### CHAPTER 273. GENERAL RULES

**22 TAC §273.4**

The Texas Optometry Board adopts amendments to §273.4 of Chapter 273, Title 22, without changes to the proposed text published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4559).

The amendments set fees for license renewal. The amendments will fund the agency's contribution to the costs of the Prescription Monitoring Program as set out in House Bill 2561, Regular Session, 85th Legislature. Fee changes will also fund the agency's national databank query at license renewal. The query is required by Senate Bill 314, Regular Session, 85th Legislature. The rule also amends language referring to fingerprint requirements in this title.

No comments were received.

The amendment is adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.154, 351.304, and 351.308; and House Bill 2561 and Senate Bill 314, Regular Session, 85th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §§351.152, 351.154, 351.304, and 351.308 as authorizing the agency to set license renewal and late renewal fees and requiring a deposit to the University of Houston of a percentage of the renewal fee. House Bill 2561 amends the Prescription Monitoring Program and authorizes the agency to increase renewal fees to fund a transfer to the Texas State Board of Pharmacy. Senate Bill 314 requires the agency to query a national databank at cost for each license renewal.

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 November 16, 2017.

TRD-201704603
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: December 6, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 305-8500

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## CHAPTER 277. PRACTICE AND PROCEDURE

### 22 TAC §277.1, §277.11

The Texas Optometry Board adopts amendments to §277.1 of Chapter 277, Title 22, and new rule §277.11, without changes to the proposed text published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4560).

The amendments state that anonymous complaints cannot be accepted and that the agency will attempt to preserve the confidentiality of the complainant in the investigative process, with some exceptions. The new rule authorizes the agency to require a licensee or applicant to submit to a Mental or Physical Examination if evidence of an incapacity prevents or could prevent the applicant or license holder from practicing with reasonable skill, competence, and safety to the public.

No comments were received.

The amendments and new rule are adopted under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.2045, and 351.205; and Senate Bill 314, Regular Session, 85th Legislature, including new §351.5014. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §§351.2045, and 351.205 as setting out the confidential status of a complaint and requiring the agency to adopt rules concerning the investigation of a complaint. Senate Bill 314 adds requirements regarding anonymous complaints and notice requirements for complaints from insurers, agents, administrators and drug companies. Senate Bill 314 in §351.5014 creates a process for the agency to order a physical or mental examination.

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 November 16, 2017.

TRD-201704604
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: December 6, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 305-8500

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# PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

## CHAPTER 511. ELIGIBILITY
## SUBCHAPTER D. CPA EXAMINATION

### 22 TAC §511.92

The Texas State Board of Public Accountancy adopts an amendment to §511.92, concerning Definitions, without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5360). The amended rule will not be republished.

The amendment to §511.92 utilizes the best language for describing impairments.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 November 16, 2017.

TRD-201704670
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 6, 2017
Proposal publication date: October 6, 2017
For further information, please call: (512) 305-7842

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### 22 TAC §511.94

The Texas State Board of Public Accountancy adopts an amendment to §511.94, concerning Documentation of the Need for an Accommodation, without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5361). The amended rule will not be republished.

The amendment to §511.94 utilizes the best language for describing impairments.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 November 16, 2017.

TRD-201704671

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 6, 2017
Proposal publication date: October 6, 2017
For further information, please call: (512) 305-7842

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## SUBCHAPTER F. EXPERIENCE REQUIREMENTS

### 22 TAC §511.123

The Texas State Board of Public Accountancy adopts an amendment to §511.123, concerning Reporting Work Experience, without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5362) and will not be republished.

The amendment to §511.123 adopts language requiring the supervising CPA to affirm in writing that he has supervised the work of the applicant for at least one year and expresses the opinion that the applicant is qualified to perform accounting work in accordance with professional standards.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 November 16, 2017.

TRD-201704672
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 6, 2017
Proposal publication date: October 6, 2017
For further information, please call: (512) 305-7842

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## CHAPTER 515. LICENSES

### 22 TAC §515.8

The Texas State Board of Public Accountancy adopts an amendment to §515.8, concerning Retired or Disability Status, without changes to the proposed text as published in the October 6, 2017 issue of the *Texas Register* (42 TexReg 5363) and will not be republished.

The amendment to §515.8 provides guidance on what constitutes retirement, requires retired CPAs to identify themselves as "retired," and expands upon what constitutes what may be considered to be volunteer work performed in retired status.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 November 16, 2017.

TRD-201704673
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 6, 2017
Proposal publication date: October 6, 2017
For further information, please call: (512) 305-7842

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## CHAPTER 519. PRACTICE AND PROCEDURE
## SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7, concerning Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board, without changes to the proposed text as published in the October 6, 2017, issue of the *Texas Register* (42 TexReg 5365) and will not be republished.

The amendment to §519.7 puts in place the process for determining whether a misdemeanor conviction in another state is comparable to a misdemeanor in Texas which would subject a licensee to possible disciplinary action.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 November 16, 2017.

TRD-201704676
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: December 6, 2017
Proposal publication date: October 6, 2017
For further information, please call: (512) 305-7842

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# PART 23. TEXAS REAL ESTATE COMMISSION

## CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

### 22 TAC §531.18

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §531.18, Consumer Information in Chapter 531, Canons of Professional Ethics and Conduct, with changes to the proposal, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4228).

The amendments to §531.18 increases the font size of the link to the required notice and prohibits its placement in the footer so that the link to the notice will be easier for consumers to find. The amendments also define "business website" and provide additional methods for compliance for social media platforms.

Eighteen comments were received on the amendments as published, two from trade associations. Most of the commenters pointed out that the footer is a good place for consumers to find the link to the required notice and that is should not be prohibited. The Commission agrees and has revised the language to remove the prohibition of placing the link to the notice in the footer. The Commission notes however, that if placed in the footer, the link must still meet the font size and "readily noticeable" requirement in the rule. Other commenters, including the associations stated that those who are currently in compliance should not have to redo the link in another font size. The Commission agrees and added the shortened version of the link name in a larger font size as a second option, rather than a replacement. This shorter version may be a better fit on social media sites that are used as business websites.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the amendments is greater clarity in the rule to achieve better compliance by license holders, so the consumer is better informed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

*§531.18. Consumer Information.*

(a) The Commission adopts by reference the Consumer Protection Notice TREC No. CN 1-2. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each active real estate broker and sales agent shall provide the notice adopted under subsection (a) by:

(1) displaying it in a readily noticeable location in each place of business the broker maintains; and

(2) providing a link to it in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Consumer Protection Notice", in at least 10 point font; or

(B) "TREC Consumer Protection Notice", in at least 12 point font.

(c) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(d) For purposes of providing the link required under subsection (b)(2) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

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 November 16, 2017.

TRD-201704611
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: December 6, 2017
Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3092

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### 22 TAC §531.20

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §531.20, Information About Brokerage Services in Chapter 531, Canons of Professional Ethics and Conduct, with changes to the proposal, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4229).

The amendments to §531.20 increases the font size of the link to the required notice and prohibits its placement in the footer so that the link to the notice will be easier for consumers to find. The amendments also clarify existing requirements, define "business website" and provide additional methods for compliance for social media platforms.

Eighteen comments were received on the amendments as published, two from trade associations. Most of the commenters pointed out that the footer is a good place for consumers to find the link to the required notice and that it should not be prohibited. The Commission agrees and has revised the language to remove the prohibition of placing the link to the notice in the footer. The Commission notes however, that if placed in the footer, the link must still meet the font size and "readily noticeable" require-

ment in the rule. Other commenters, including the associations stated that those who are currently in compliance should not have to redo the link in another font size. The Commission agrees and added the shortened version of the link name in a larger font size as a second option, rather than a replacement. This shorter version may be a better fit on social media sites that are used as business websites.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the amendments is greater clarity in the rule to achieve better compliance by license holders, so the consumer is better informed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

*§531.20. Information About Brokerage Services.*

(a) The Commission adopts by reference the Information About Brokerage Services Notice, TREC No. IABS 1-0 (IABS Notice). The IABS Notice is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(b) Each active real estate broker and sales agent shall provide:

(1) a link to a completed IABS Notice in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Information About Brokerage Services", in at least 10 point font; or

(B) "TREC Information About Brokerage Services", in at least 12 point font; and

(2) the completed IABS Notice at the first substantive communication as required under §1101.558, Texas Occupations Code.

(c) For purposes of §1101.558, Texas Occupations Code, the completed IABS Notice can be provided:

(1) by personal delivery by the broker or sales agent;

(2) by first class mail or overnight common carrier delivery service;

(3) in the body of an email; or

(4) as an attachment to an email, or a link within the body of an email, with a specific reference to the IABS Notice in the body of the email.

(d) The link to a completed IABS Notice may not be in a footnote or signature block in an email.

(e) For purposes of this section, business website means a website on the internet that:

(1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(f) For purposes of providing the link required under subsection (b)(1) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

(g) License holders may reproduce the IABS Notice published by the Commission, provided that the text of the IABS Notice is copied verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the published version of the IABS Notice, except that the Broker Contact Information section may be prefilled.

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 November 16, 2017.

TRD-201704612
Kerri Lewis
General Counsel
Texas Real Estate Commission
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# CHAPTER 533. PRACTICE AND PROCEDURE
## SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

### 22 TAC §533.3

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §533.3, Filing and Notice, in Chapter 533, Practice and Procedure, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4230).

The amendments to §533.3 extend the time the applicant has to request a hearing following notice from the Commission and clarifies the starting date for the statutory two year waiting period following denial before an applicant can reapply. The amendments were recommended by the Commission's Enforcement Committee.

No comments were received on the amendments as published.

The reasoned justification for the amendments is greater clarity in the rule.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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# CHAPTER 534. GENERAL ADMINISTRATION

## 22 TAC §534.3

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §534.3, Employee Training and Education, in Chapter 534, General Administration, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4230).

The amendments to §534.3 set out the general rules required by Subchapter C, Chapter 656 of the Texas Government Code but allows the detail regarding employee eligibility for training, and employee obligations after completion of training and education, etc. to be set by the Executive Director through employee policies. This will allow more flexibility for the Executive Director to respond to the needs of the workforce and to remain competitive in this area with other employers. It will also provide one central place for employees to find detailed information about the Commission's policies on employee education and training.

No comments were received on the amendments as published.

The reasoned justification for the amendments is increased ability to respond to the training needs of the agency workforce.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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# CHAPTER 535. GENERAL PROVISIONS
# SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

## 22 TAC §535.17

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.17, Broker Price Opinion or Comparative Market Analysis, in Chapter 535, General Provisions, with non-substantive changes to the text as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4231).

The amendments to §535.17 include estimated worth or sales price in the types of price statements that require a broker to provide a written statement to consumers. The amendments also revise and shorten the required written statement. "Salesperson" was also updated to the statutory term "sales agent" wherever it appeared.

Five comments were received on the proposed amendments. Three commenters were in favor of the change and two had questions regarding the change. Staff recommended a clarifying change to the language in the disclosure due to proposed rule changes in federal law regarding appraisals required for loans. The Commission agreed with the change.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the amendments is greater consumer protection by making consumers aware of the basis of the figure given by license holders regarding what their home is worth. This is particularly needed with the proliferation of online tools that give these figures out to consumers on internet sites.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

*§535.17. Broker Price Opinion, Comparative Market Analysis, or Sales Price Estimate.*

(a) A real estate license holder may not perform an appraisal of, or provide an opinion of value for, real property unless the license holder is licensed or certified under Texas Occupations Code, Chapter 1103.

(b) If a real estate license holder provides a broker price opinion, comparative market analysis, or estimated worth or sale price under the Act, the license holder shall also provide the person for whom the opinion, analysis, or estimate is prepared with a written statement containing the following language: "This represents an estimated sale price for this property. It is not the same as the opinion of value in an appraisal developed by a licensed appraiser under the Uniform Standards of Professional Appraisal Practice."

(c) The statement required by subsection (b) of this section must be made part of any written opinion, analysis, or estimate of worth or sale price and must be reproduced verbatim in at least 12-point font.

(d) A sales agent may prepare, sign, and present a broker price opinion, comparative market analysis, or estimate of worth or sale price for the sales agent's sponsoring broker, but the sales agent must submit the broker price opinion, comparative market analysis, or estimate of worth or sale price in the broker's name and the broker is responsible for it.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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## SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

### 22 TAC §535.71

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.71, Approval of CE Providers, in Chapter 535, General Provisions, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4234).

The amendments eliminate exemptions from TREC requirements for certain education providers of real estate inspection continuing education courses. These exemptions caused confusion in the marketplace, were inconsistent with exemptions allowed by TREC for education providers of real estate courses, and were only utilized by license holders to obtain continuing education course credits in a few limited circumstances.

No comments were received on the proposed amendments as published, and the Texas Real Estate Inspector Committee recommends adopting the amendments as published.

The reasoned justification for the amendments is to eliminate confusion in the marketplace and clarify the inspector continuing education requirements for license holders and education providers.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102; and Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statute affected by the amendments is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201704662
Kristen Worman
Deputy General Counsel
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For further information, please call: (512) 936-3093

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## SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

### 22 TAC §535.141

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.141, Initiation of Investigation, in Chapter 535, General Provisions, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4234).

The amendments to §535.141 removes subsection (a) which references the Mortgage Fraud Task Force that was abolished by SB 526 in the 85th Legislative Session. The remaining section was renumbered and "salesperson" was updated to the statutory term "sales agent" wherever it appeared.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to reflect recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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**22 TAC §535.154**

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §535.154, Advertising, in Chapter 535, General Provisions, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4236).

The repeal is necessary because a new rule is being adopted to provide greater clarity for advertising requirements and to conform the rule with statutory changes made by the 85th Legislature.

No comments were received on the repeal as published.

The reasoned justification for the amendments is the rule was replaced with new rules to align with recent statutory changes and to make it clear to the public who is responsible for the operation of the brokerage for the real estate services advertised.

The repeal is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this repeal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the repeal.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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**22 TAC §535.154, §535.155**

The Texas Real Estate Commission (TREC) adopts new 22 TAC §535.154, Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements and new 22 TAC §535.155, Advertisements, in Chapter 535, General Provisions, with changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4236).

The new rules align the rules with statutory changes adopted in SB 2212 by the 85th Legislature effective September 1, 2017 and implement changes to the rules recommended by the Commission's Executive Committee following over a year of study and input from stakeholders. The rule was split into two rules to separate out name and registration of name requirements from advertising requirements. Most of the new requirements involve changes to how team names are defined, registered and used. New statutory provisions and a consensus by stakeholders that team names presently cause most of the consumer confusion in advertisements drove these changes. Much of the new rules contains provisions that are similar or identical to the current rule but have been rewritten for clarity. Additionally, new definitions were added, the requirement for notifying the Commission of the use of an alternate name, assumed business name or team name was amended to require registration of the names with the Commission prior to their use, and the current safe harbor policy regarding the size of the broker's name in advertisement was put into the rule.

Twenty-two comments were received on the proposal as published. One was from a trade association and five other commenters supported their remarks. The trade association was generally in support of the new rules with the exception of subsections (d)(4) and (d)(7). Commission staff after reviewing the comments and consulting with the association recommended revisions that the association endorses. Staff also recommended additional language to further distinguish the definitions of a broker's assumed business name and a team name. Of the remaining commenters, seven were opposed to the requirements for team names and nine were generally in support.

The Commission recognizes that some license holders on teams will need to change their signage under the new rules. To ameliorate this expense, the Commission has extended the effective date of the rule until May 15, 2018 to allow those license holders to spread out the cost of new signage over time.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the proposal is increased consumer protection by setting out requirements that will make it clear to the public who is responsible for the operation of the brokerage when they view license holders' advertisements.

The new rules are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

*§535.154. Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements.*

(a) Definitions. For the purposes of this section:

(1) "Advertisement" has the meaning assigned by §535.155.

(2) "Alternate name" (commonly known as an alias) means a name used by an individual license holder other than the name shown on the license issued by the Commission, such as a middle name, maiden name, or nickname. It does not include a common

derivative of a name, such as Kim for Kimberly or Bill for William, which is considered the same as the name shown on the license.

(3) "Associated broker" means a broker who associates with and gets paid through another broker under a relationship that is intended to be a continuous relationship, including but not limited to, an employment or ongoing independent contractor relationship.

(4) "Assumed business name" (commonly known as a DBA or trade name) means any name used in business by a broker that meets the requirements of subsection (d), other than the name shown on the broker's license issued by the Commission, a team name, or an alternate name.

(5) "Team name" means a name used by a group of one or more license holders sponsored by or associated with the same broker that performs real estate activities under an exclusive collective name other than the broker's licensed name or assumed business name.

(b) Alternate names.

(1) Before a license holder starts using an alternate name in an advertisement, the license holder must register the name with the Commission on a form approved by the Commission.

(2) The Commission may request supporting documentation evidencing the legal authority to use the alternate name if the last name submitted is different from the last name shown on the license issued by the Commission.

(3) A license holder must notify the Commission, and their sponsoring broker, not later than the 10th day after the date the license holder stops using an alternate name.

(c) Team names:

(1) A team name may not include any terms that could mislead the public to believe think that the team is offering brokerage services independent from its sponsoring broker.

(2) A team name must end with the word "team" or "group".

(3) Before an associated broker or a sales agent sponsored by a broker starts using a team name in an advertisement, the broker must register the name with the Commission on a form approved by the Commission.

(4) A broker must notify the Commission in writing not later than the 10th day after the date the associated broker or a sales agent sponsored by the broker stops using a team name.

(d) Assumed business names.

(1) Before a broker, associated broker or a sales agent sponsored by a broker starts using an assumed business name of the broker in an advertisement, the broker must:

(A) register the name with the Commission on a form approved by the Commission; and

(B) provide written evidence of legal authority to use the assumed business name in Texas, such as registration of the name with the Secretary of State or county clerk's office.

(2) A broker must notify the Commission in writing not later than the 10th day after the date the broker stops using an assumed business name.

*§535.155. Advertisements.*

(a) Each advertisement must include the following in a readily noticeable location in the advertisement:

(1) the name of the license holder or team placing the advertisement; and

(2) the broker's name in at least half the size of the largest contact information for any sales agent, associated broker, or team name contained in the advertisement.

(b) For the purposes of this section:

(1) "Advertisement" is any form of communication by or on behalf of a license holder designed to attract the public to use real estate brokerage services and includes, but is not limited to, all publications, brochures, radio or television broadcasts, all electronic media including email, text messages, social media, the Internet, business stationery, business cards, displays, signs and billboards. Advertisement does not include a communication from a license holder to the license holder's current client.

(2) Associated broker has the meaning assigned by §535.154.

(3) "Broker's name" means:

(A) the broker's name as shown on a license issued by the Commission;

(B) if an individual, an alternate name registered with the Commission; or

(C) any assumed business name that meets the requirements of §535.154.

(4) "Contact Information" means any information that can be used to contact a license holder featured in the advertisement, including a name, phone number, email address, website address, social media handle, scan code or other similar information.

(5) "Party" means a prospective buyer, seller, landlord, or tenant, or an authorized legal representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.

(6) "Team name" has the meaning assigned by §535.154.

(c) For an advertisement on social media or by text, the information required by this section may be located on a separate page or on the account user profile page of the license holder, if the separate page or account user profile is:

(1) readily accessible by a direct link from the social media or text; and

(2) readily noticeable on the separate page or in the account user profile.

(d) For purposes of this section and §1101.652(b)(23) of the Act, an advertisement that misleads or is likely to deceive the public, tends to create a misleading impression, or implies that a sales agent is responsible for the operation of the broker's real estate brokerage business includes, but is not limited to, any advertisement:

(1) that is inaccurate in any material fact or representation;

(2) that does not comply with this section;

(3) that identifies a sales agent as a broker;

(4) that uses a title, such as owner, president, CEO, COO, or other similar title, email or website address that implies a sales agent is responsible for the operations of a brokerage;

(5) that contains a team name with terms that imply that the team is offering brokerage services independent from its sponsoring

broker, including, but not limited to, "realty", "brokerage", "company", and "associates";

(6) that contains the name of a sales agent that is not the name as shown on the sales agent's license issued by the Commission or an alternate name registered with the Commission;

(7) that contains the name of a sales agent whose name is, in whole or in part, used in a broker's name and that implies that the sales agent is responsible for the operation of the brokerage;

(8) that causes a member of the public to believe that a person not licensed to conduct real estate brokerage is engaged in real estate brokerage;

(9) that contains the name or likeness of an unlicensed person that does not clearly disclose that the person does not hold a license;

(10) that creates confusion regarding the permitted use of a property;

(11) about the value of a property, unless it is based on an appraisal that is disclosed and readily available upon request by a party or it is given in compliance with §535.17;

(12) that implies the person making the advertisement was involved in a transaction regarding a property when the person had no such role;

(13) about a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed in writing to waive disclosure;

(14) offering a listed property that is not discontinued within 10 days after the listing agreement is no longer in effect;

(15) about a property 10 days or more after the closing of a transaction unless the current status of the property is included in the advertisement;

(16) that offers to rebate a portion of a license holder's compensation to a party if the advertisement does not disclose that payment of the rebate is subject to the consent of the party the license holder represents in the transaction;

(17) that offers to rebate a portion of a license holder's commission contingent upon a party's use of a specified service provider, or subject to approval by a third party such as a lender, unless the advertisement also contains a disclosure that payment of the rebate is subject to restrictions;

(18) that offers or promotes the use of a real estate service provider other than the license holder and the license holder expects to receive compensation if a party uses those services, if the advertisement does not contain a disclosure that the license holder may receive compensation from the service provider;

(19) that ranks the license holder or another service provider unless the ranking is based on objective criteria disclosed in the advertisement; or

(20) that states or implies that the license holder teaches or offers Commission approved courses in conjunction with an approved school or other approved organization unless the license holder is approved by the Commission to teach or offer the courses.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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## SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

### 22 TAC §535.191

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4238).

The amendments to §535.191 inserts administrative penalties for failure to comply with Commission rules §531.18 and §531.20. These rules were adopted 18 months ago and, following a long education campaign, the Commission now needs to clarify and modify the sanctions in place for license holders who still do not properly provide these important statutorily required consumer notices. The amendments also adds §535.155 to align with the new rule to replace current §535.154 and adds §535.65 related to responsibilities and operations of education providers.

Three comments were received on the amendments as published. All were against the proposal stating that the amount of penalties were excessive for violations of rules 531.18 & 531.20. The Commission disagrees for two reasons. First, posting the notices on the license holder's business website is important for consumer education and protection, especially in light of the recent statutory change for prohibiting the Commission from requiring any reference to the Commission or a license holder's status as an agent or a broker in advertisements. Secondly, the violation of the rules, when not listed on the schedule of penalties would default to the statutory provision that contains the general requirement. This statute is Section 1101.558. Violation of that statute falls under the highest penalty range on the schedule. The Commission considers violation of the posting requirements for the links to the notices to be a lesser violation than not providing them at all, and placed the rules in the second tier of penalties. Therefore, the amendments actually lessens the amount of penalties that can be assessed for violation of these rules.

The reasoned justification for the amendments is to reflect recent rule revisions in the appropriate levels in the schedule.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.218

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.218, Continuing Education Required for Renewal in Subchapter R, Real Estate Inspectors, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4240).

The amendments eliminate exemptions from TREC requirements for certain education providers of real estate inspection continuing education courses and conform this rule with amendments to §535.71 of this Chapter. These exemptions caused confusion in the marketplace, were inconsistent with exemptions allowed by TREC for education providers of real estate courses, and were only utilized by license holders to obtain continuing education course credits in a few limited circumstances.

No comments were received on the amendments as published, and the Texas Real Estate Inspector Committee recommends adopting the amendments as published.

The reasoned justification for the amendments is to eliminate confusion in the marketplace and clarify the inspector continuing education requirements for license holders and education providers.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102; and Texas Occupations Code §1102.058, which authorizes the Commission to adopt rules relating to continuing education requirements for inspectors.

The statute affected by this amendment is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Effective date: December 6, 2017
Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3093

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## SUBCHAPTER S. RESIDENTIAL RENTAL LOCATORS

### 22 TAC §535.300

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.300, Advertising by Residential Rental Locators, in Chapter 535, General Provisions, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4241).

The amendments are adopted to align the rules with statutory changes in SB 2212 adopted by the 85th Legislature to be effective September 1, 2017. As required by the statutory changes, the amendments eliminate the current required reference to the Commission in all advertising. "Salesperson" was also updated to the statutory term "sales agent" wherever it appeared.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory and rule changes.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2017.

TRD-201704636
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: May 15, 2018
Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3092

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## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.11

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §537.11, Use of Standard Contract Forms in Chapter 537, Professional Agreements and Standard Contracts,

with changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4242).

The amendments to §537.11 clarifies when a license holder can hire an attorney to prepare a form for use by the license holder's clients and the specific disclosures such a form must contain. The remaining amendments to the rule consolidate and update how a license holder can use the standard contract forms approve by the Commission and what is considered the unauthorized practice of law.

Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted and recommended for adoption by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor.

Twenty-seven comments were received on the amendments as published. Four were from trade associations. One comment was in full support of the changes. The other non-association comments were from members of one of the associations in support of the letter written by that association. All of the associations expressed concern over having to revise their forms used by Commission license holders to meet the requirements of proposed amendments. The Commission did not feel that this presented an undue burden on the associations, especially in light of the increased consumer protection in the form of greater transparency in the forms. However, some of the comments presented by the associations did result in staff recommended changes to the proposal. One comment was received regarding the possibility that the changes proposed in subsection (a)(3) was an overly restrictive interpretation of the statutory exception in Texas Occ. Code §1101.155(b). The Commission agreed and changed that provision to mirror the statutory language. While most of the associations understood and agreed with the intent behind subsection (a)(4), they opposed new subsection (b) and requested revisions to (a)(4) to allow the associations to be able to quickly respond to changes in the market and meet the needs of their members. The Commission agreed and deleted new subsection (b) and revised subsection (a)(4) to require several additional disclosures only when a form changed the rights, obligations or remedies of a party under a contract or addendum form approved by the Commission for mandatory use by license holders.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the amendments is greater clarity in the rule for license holders and greater transparency in forms given to consumers to use in transactions by license holders.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

*§537.11. Use of Standard Contract Forms.*

(a) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate license holder shall use only those contract forms approved for mandatory use by the Texas Real Estate Commission (the Commission) for that type of transaction with the following exceptions:

(1) transactions in which the license holder is functioning solely as a principal, not as an agent;

(2) transactions in which an agency of the United States government requires a different form to be used;

(3) transactions for which a contract form, or addendum to a contract form, has been prepared by a property owner or prepared by a lawyer and required by a property owner; or

(4) transactions for which no mandatory contract form or addendum has been approved by the Commission, and the license holder uses a form:

(A) prepared by a lawyer licensed by this state, or a trade association in consultation with one or more lawyers licensed by this state, for the particular type of transactions involved that contains:

*(i)* the name of the lawyer or trade association who prepared the form;

*(ii)* the name of the broker or trade association for whom the form was prepared;

*(iii)* the type of transaction for which the lawyer or trade association has approved the use of the form;

*(iv)* any restrictions on the use of the form; and

*(v)* if it is an addendum that changes the rights, obligations or remedies of a party under a contract or addendum form approved by the Commission for mandatory use, the form must also include:

*(I)* a statement about how the addendum changes the rights, obligations or remedies of a party, with a reference to the relevant paragraph number in the mandatory use form;

*(II)* a statement that the form is not a mandatory Texas Real Estate Commission form; and

*(III)* a statement that Commission rules prohibit real estate license holders from giving legal advice; or

(B) prepared by the Texas Real Estate Broker-Lawyer Committee (the committee) and approved by the Commission for voluntary use by license holders.

(b) A license holder may not:

(1) practice law;

(2) directly or indirectly offer, give or attempt to give legal advice;

(3) give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate;

(4) give opinions concerning the status or validity of title to real estate;

(5) draft language defining or affecting the rights, obligations or remedies of the principals of a real estate transaction, including escalation, appraisal or other contingency clauses;

(6) add factual statements or business details to a form approved by the Commission if the Commission has approved a form or addendum for mandatory use for that purpose;

(7) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer; or

(8) employ or pay for the services of a lawyer, directly or indirectly, to represent a principal to a real estate transaction in which the license holder is acting as an agent.

(c) This section does not limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts that are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate.

(d) It is not the practice of law for a license holder to fill in the blanks in a contract form authorized for use by this section. A license holder shall only add factual statements and business details or shall strike text as directed in writing by the principals.

(e) This section does not prevent the license holder from explaining to the principals the meaning of the alternative choices, factual statements and business details contained in an instrument so long as the license holder does not offer or give legal advice.

(f) When a transaction involves unusual matters that should be reviewed by a lawyer before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the principals that each should consult a lawyer of the principal's choice before executing the instrument.

(g) A license holder may employ and pay for the services of a lawyer to represent only the license holder in a real estate transaction.

(h) A license holder shall advise the principals that the instrument they are about to execute is binding on them.

(i) Forms approved by the Commission may be reproduced only from the following sources:

(1) electronically reproduced from the files available on the Commission's website;

(2) printed copies made from copies obtained from the Commission;

(3) legible photocopies made from such copies; or

(4) computer-driven printers following these guidelines:

(A) The computer file or program containing the form text must not allow the end user direct access to the text of the form and may only permit the user to insert language in blanks in the forms. Blanks may be scalable to accommodate the inserted language. The Commission may approve the use of a computer file or program that permits a principal of a license holder to strike through language of the form text. The program must be:

*(i)* limited to use only by a principal of a transaction; and

*(ii)* in a format and authenticated in manner acceptable to the Commission.

(B) Typefaces or fonts must appear to be identical to those used by the Commission in printed copies of the particular form.

(C) The text and order of the text must be identical to that used by the Commission in printed copies of the particular form.

(D) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.

(j) Forms approved or promulgated by the Commission must be reproduced on the same size of paper used by the Commission with the following changes or additions only:

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in any blank provided for that purpose.

(k) Standard Contract Forms adopted by the Commission are published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188 or www.trec.texas.gov.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201704640
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: May 15, 2018
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For further information, please call: (512) 936-3092

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## CHAPTER 539. RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT
## SUBCHAPTER D. DEFINITIONS

**22 TAC §539.31**

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.31, Definitions, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4245).

The amendments align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to improve comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rules with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201704641

Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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## SUBCHAPTER E. DISCLOSURES

### 22 TAC §539.41

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.41, Disclosures, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4246).

The amendments align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018, and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
Executive Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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## SUBCHAPTER F. AUTHORIZED PERSONNEL

### 22 TAC §539.51

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.51, "Employed By" Defined, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4246).

The amendments update the term "salesperson" to the statutory "sales agent".

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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## SUBCHAPTER G. APPLICATIONS AND MAINTENANCE OF LICENSE

### 22 TAC §539.61, §539.62

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.61, Application for Residential Service Company License and §539.62, Application to Approve Evidence of Coverage/Schedule of Charges, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4247).

The amendments align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018, and to increase comprehension. The reference to the fees is for clarity of the process. The fees are not new and have not changed.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by these amendments is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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### 22 TAC §539.63

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §539.63, Termination of Application, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4247).

The repeal is necessary because a new rule is being adopted to conform the rule with statutory changes made by the 85th Legislature and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The repeal is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the repeal.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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### 22 TAC §539.63

The Texas Real Estate Commission (TREC) adopts new 22 TAC §539.63, Application to Approve Contract, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4248).

The new rules align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to increase comprehension. The reference to the fees is for clarity of the process. The fees are not new and have not changed.

No comments were received on the new rule as published.

The reasoned justification for the new rule is to align the rule with recent statutory changes.

The new rule is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the adoption.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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### 22 TAC §539.64, §539.65

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.64, Mailing Address and Other Contact Information, and §539.65, Change in Company Ownership or Officers, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4248).

The amendments to §539.64 and §539.65 align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201704653

Kerri Lewis
General Counsel
Texas Real Estate Commission
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Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3092

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## SUBCHAPTER H. MISCELLANEOUS FORMS

### 22 TAC §539.71

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.71, Miscellaneous Forms, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4249).

The amendments align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3092

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## SUBCHAPTER I. FINANCIAL ASSURANCES

### 22 TAC §539.81, §539.82

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.81, Funded Reserves and §539.82, Security, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4249).

The amendments to §539.81 and §539.82 align the rules with statutory changes in HB 2279, adopted by the 85th Legislature to be effective January 1, 2018, and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 16, 2017.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: January 1, 2018
Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3092

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## SUBCHAPTER J. ANNUAL REPORT

### 22 TAC §539.91

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.91, Annual Report, in Chapter 539, Rules Relating to the Residential Service Company Act, with changes to the proposal, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4250).

The amendments to §539.91 align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to increase comprehension. The subsection regarding mid-year reports was moved and rewritten from another rule that is being repealed for better clarity. The reference to the fee is for clarity of the process. The fee is not new and has not changed.

No comments were received on the amendments as published but a typographical error was corrected in subsection b since no fee is currently required for the mid-year report.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed rules.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

*§539.91. Reports.*

(a) Annual Report. Each residential service company shall file an Annual Report on a form prescribed by the Commission for that purpose and submit the required fee under §539.231 no later than February 1 of each year for the preceding calendar year, with the financial statements filed no later than April 1.

(b) Mid-Year Report. Each residential service company shall file a Mid-Year Report on a form prescribed by the Commission for that purpose and submit any required fee under §539.231 no later than August 1 of each year for the preceding months of January through June.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: January 1, 2018
Proposal publication date: August 25, 2017
For further information, please call: (512) 936-3092

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## SUBCHAPTER M. EXAMINATIONS

### 22 TAC §539.121

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.121, Examinations, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4251).

The amendments to §539.121 align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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## SUBCHAPTER N. MID-YEAR REPORT

### 22 TAC §539.137

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §539.137, Mid-Year Report, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4251).

The repeal aligns the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018. The subject matter of this rule was moved to section 539.91 dealing with all reports for greater clarity.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The repeal is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed repeal.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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For further information, please call: (512) 936-3092

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## SUBCHAPTER Q. ISSUES AFFECTING CONSUMERS

### 22 TAC §539.160

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §539.160, Copy of Residential Service Company Contract, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4252).

The repeal aligns the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018.

No comments were received on the repeal as published.

The reasoned justification for the repeal is to align the rule with recent statutory changes.

The repeal is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this repeal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed repeal.

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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Kerri Lewis
General Counsel
Texas Real Estate Commission
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## SUBCHAPTER X. FEES

### 22 TAC §539.231

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §539.231, Fees, in Chapter 539, Rules Relating to the Residential Service Company Act, without changes, as published in the August 25, 2017, issue of the *Texas Register* (42 TexReg 4252).

The amendments to §539.231 align the rules with statutory changes in HB 2279 adopted by the 85th Legislature to be effective January 1, 2018 and to increase comprehension.

No comments were received on the amendments as published.

The reasoned justification for the amendments is to align the rule with recent statutory changes.

The amendments are adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1303.

The statute affected by this amendment is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 20. TEXAS WORKFORCE COMMISSION

## CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 807, relating to Career Schools and Colleges, without changes, as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4592):

Subchapter A. General Provisions, §807.2

TWC adopts the following new section to Chapter 807, relating to Career Schools and Colleges, without changes, as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4592):

Subchapter Q. Truck Driver Training Programs, §807.326

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas law charges TWC with exercising jurisdiction and control of the oversight of career schools and colleges operating in Texas. TWC's Career Schools and Colleges department (CSC) licenses and regulates nonexempt private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. TWC currently regulates more than 560 career schools and colleges, which provide training to more than 160,000 students annually.

House Bill (HB) 29 and Senate Bill (SB) 128, passed by the 85th Texas Legislature, Regular Session (2017), enacted new Texas Education Code §132.006 to require each career school or college that offers a Commercial Driver's License (CDL) training program to include, as a part of that program, education and training on the recognition and prevention of human trafficking. These rules are adopted under Texas Education Code §132.006, which directs TWC to adopt rules to administer this new requirement and, in conjunction with the Office of the Attorney General, to establish the content of the required education and training. Additionally, Texas Labor Code §301.0015 and §302.002(d) provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities. The legislation requires TWC to adopt these rules no later than December 1, 2017.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§807.2. Definitions

New §807.2(26) adds the definition of Human Trafficking to read: "the action or practice of illegally transporting people from one country or area to another, typically for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Chapter 20A of the Texas Penal Code."

SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

TWC adopts the following amendments to Subchapter Q:

§807.326. Required Training for Students

New §807.326 is added to require Career Schools and Colleges that offer CDL training to include education and training on the recognition and prevention of human trafficking, the content of which is to be established by TWC and the Office of the Attorney General.

No comments were received.

## SUBCHAPTER A. GENERAL PROVISIONS

**40 TAC §807.2**

The amendment is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

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 November 15, 2017.

TRD-201704587
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: December 5, 2017
Proposal publication date: September 8, 2017
For further information, please call: (512) 475-0829

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## SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

**40 TAC §807.326**

The new rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

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 821. TEXAS PAYDAY RULES

## SUBCHAPTER C. WAGE CLAIMS

**40 TAC §821.41, §821.42**

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 821, relating to Texas Payday Rules, without changes, as published in the September 8, 2017, issue of the *Texas Register* (42 TexReg 4595):

Subchapter C. Wage Claims, §821.41 and §821.42

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 821 rule change is to facilitate implementation of *House Bill (HB 2443),* 85th Texas Legislature, Regular Session (2017), relating to the electronic filing of wage claims under the Texas Payday Act (Act).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. WAGE CLAIMS

TWC adopts the following amendments to Subchapter C:

§821.41. Validity of Claim/Filing and Investigative Procedures

Section 821.41 is amended to add electronic submission of wage claims, through methods approved by TWC, as an additional way that a worker can file a claim for unpaid wages. Currently, Texas workers can submit claims for unpaid wages to TWC in person at their nearest Workforce Solutions Office, by mailing a wage claim form to TWC at a designated address, or by faxing a claim to a fax number designated by TWC. *HB 2443* envisioned that, with advances in technology, TWC would better serve Texans by offering an electronic option for the public to submit wage claims. The adopted rule amendment comports with the intent of the statute to afford electronic wage claim submittal to Texas workers seeking that option while allowing TWC flexibility in the future to leverage as yet undeveloped or under-developed technologies related to electronic wage claim filing and management.

§821.42. Timeliness

Section 821.42 is amended to conform the timeliness requirements of wage claim filing to the new electronic submission

mechanism mandated in *HB 2443.* Since TWC will be required to accept wage claims submitted electronically on or after January 1, 2018, it will be necessary to adopt §821.42 to stipulate that a wage claim submitted electronically is deemed timely when it is received by TWC.

No comments were received.

The rules are adopted under Texas Labor Code §61.002 and §301.0015, which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Chapter 61.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 1. MANAGEMENT

### SUBCHAPTER F. ADVISORY COMMITTEES

**43 TAC §§1.82, 1.84 - 1.88**

The Texas Department of Transportation (department) adopts amendments to §1.82, Statutory Advisory Committee Operations and Procedures, §1.84, Statutory Advisory Committees, §1.85, Department Advisory Committees, §1.86, Corridor Advisory Committees, and §1.87, Corridor Segment Advisory Committees, and new §1.88, Interim Report. The amendments to §1.82, and §§1.84 - 1.87 and new §1.88 are adopted without changes to the proposed text as published in the October 13, 2017 issue of the *Texas Register* (42 TexReg 5653) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are the result of statutory changes made by the legislature during the 85th Regular Session, 2017 and the Texas Transportation Commission's (commission) review of the need to continue the existence of the commission's advisory committees.

Amendments to §1.82, Statutory Advisory Committee Operations and Procedures, change "office" to "division" in subsections (c), (f), and (h) and change "Office of General Counsel" to "General Counsel Division" in subsections (c)(1) to reflect name changes recently made to the department's organizational structure. The amendments also revise the sunset dates of commission advisory committees that are created by statute. Section 1.82 currently provides that each statutory advisory committee is abolished December 31, 2017. This sunset date was established under Government Code, §2110.008, which authorizes a state agency to establish by rule a date on which advisory committees will automatically be abolished unless continued. The commission determines that the continued existence of its statutory advisory committees is necessary for improved communication between the department and the public. Therefore, §1.82(i) is amended to revise the sunset date to December 31, 2019.

Amendments to §1.84, Statutory Advisory Committees, subsection (c)(2) specify that the members of the port authority advisory committee shall be appointed pursuant to Transportation Code, §55.006. Senate Bill 28, 85th Legislature, Regular Session, amended §55.006, to increase the number of members of the port authority advisory committee from seven to nine, and to provide that the lieutenant governor and the speaker of the House of Representatives will each appoint one member in addition to the members appointed by the commission. Members appointed by the commission will continue to serve staggered three-year terms. Also, amendments to subsection (b)(4) change "office" to "division" to reflect name changes recently made to the department's organizational structure.

Amendments to §1.85, Department Advisory Committees, change the date that advisory committees created under that section are abolished. Section 1.85 provides for the creation of advisory committees by the commission and provides the operating procedures for those committees. Section 1.85(c) currently provides a December 31, 2017 sunset date, which was established in accordance with Government Code, §2110.008. The commission determines that each existing advisory committee created under §1.85 is necessary for improved communication between the department and the public. Therefore, amendments to §1.85(c) extend the sunset date to December 31, 2019. Also, amendments to subsection (b) change "office" to "division" to reflect name changes recently made to the department's organizational structure.

Amendments to §1.86, Corridor Advisory Committees, change the date that corridor advisory committees created under that section are abolished. Section 1.86(e) currently provides that each advisory committee created under that section is abolished December 31, 2017. This sunset date was established in accordance with Government Code, §2110.008. The commission determines that each existing corridor advisory committee is necessary for improved communication between the department and the public. Therefore, amendments to §1.86(e) change the sunset date to December 31, 2019.

Amendments to §1.87, Corridor Segment Advisory Committees, change the date that corridor segment advisory committees created under that section are abolished. Section 1.87(e) currently provides that each corridor segment advisory committee is abolished December 31, 2017. This sunset date was established in accordance with Government Code, §2110.008. Amendments to §1.87(e) extend the sunset date for any newly created corridor segment advisory committee to December 31, 2019.

Amendments add new §1.88, Interim Report, which requires each advisory committee to file with the division of the department that is responsible for providing administrative support to that advisory committee an interim report relating to the committee's membership, structure, duties, objectives and goals, accomplishments, and scheduled activities. The executive director, or the executive director's designee, in turn will deliver a copy of the report to each commissioner. This report will assist

in the commission's oversight of the work and necessity of each advisory committee.

COMMENTS

No comments on the proposed amendments and new section were received.

STATUTORY AUTHORITY

The amendments and new section are adopted 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, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction; Transportation Code, §55.006, which requires the commission to appoint members to the port authority advisory committee; Government Code, §2110.005, which requires a state agency that establishes an advisory committee to describe by rule the manner in which the committee will report to the agency; and Government Code, §2110.008, which provides that, if a state agency committee designates the date on which an advisory committee will automatically be abolished or changes such a date, the designation or change must be by rule.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110, and Transportation Code, §§55.006 and 201.117.

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 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §10.6

The Texas Department of Transportation (department) adopts amendments to §10.6, concerning Conflict of Interest. The Amendments to §10.6 are adopted without changes to the proposed text as published in the September 15, 2017, issue of the *Texas Register* (42 TexReg 4768), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §10.6, Conflict of Interest, make several changes to clarify the circumstances in which a conflict of interest arises for certain entities doing business with the department.

Amendments to §10.6(a) revise the description of the circumstances for the existence of a conflict of interest to align it with the description of the term used in other chapters of the department's rules. These amendments are needed in order to provide a fair and unbiased contracting system and to ensure high standards of ethics and fairness in the administration of the department's programs.

Senate Bill 533, 85th Legislature, Regular Session, 2017, amended restrictions on employment for former state employees who participate on behalf of a state agency in a procurement or contract negotiation to apply for two years after a contract is signed or the procurement is terminated or withdrawn, instead of two years after the employee leaves state employment. To address that statutory change, amendments to §10.6(b)(3) revise the period of a conflict of interest for a for-profit entity that hires a former department employee who participated on behalf of the department in a procurement or negotiation of a contract awarded to the entity. Currently, §10.6 restrictions on the employment of certain former department employees apply unless more than two years have elapsed since the cessation of employment with the department. As amended, the restrictions apply unless more than two years have elapsed since the contract was signed. Amendments to §10.6(b)(3) and (g) also clarify that the conflict of interest only applies to an entity to which a contract was awarded.

Amendments to §10.6(e) update the name of a division of the department.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §572.069, as amended by Section 1, Senate Bill 533, 85th Legislature, Regular Session.

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 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) adopts amendments to §§31.3, 31.11, 31.30, 31.31, 31.36, 31.42 - 31.45, 31.47, 31.48, 31.50, and 31.57, and the repeal of §31.17 and §31.18, all concerning public transportation. The amend-

ments to §§31.3, 31.30, 31.31, 31.36, 31.42 - 31.45, 31.47, 31.48, 31.50, and 31.57, and the repeal of §§31.17 and 31.18 are adopted without changes to the proposed text as published in the September 15, 2017, issue of the *Texas Register* (42 TexReg 4792) and will not be republished. The amendments to §31.11, as published in the September 15, 2017, issue of the *Texas Register* (42 TexReg 4792), are adopted with changes to correct a formatting error in subsection (b)(1)(A)(ii) and (iii) of that section and are republished for that purpose.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS

The proposed revisions address the impact of changes in state statutes and appropriations, revise funding allocation formulas, address the impacts of revised federal program guidance, remove obsolete text, and update references to current authorizing statutes. Certain sections proposed for repeal administered obsolete federal programs.

SUBCHAPTER A, GENERAL

Amendments to §31.3, Definitions, reflect revisions to the Texas Administrative Code in Chapter 31 in accordance with state and federal statutes and federal guidance impacting the department's role in administering public transportation programs and remove references to repealed federal programs. The definition of "Common Rule," paragraph (10) is deleted. The United States Department of Transportation Common Rules have been superseded. The citation to the appropriate federal regulations has been substituted for the term "Common Rule" throughout the amended rules. The amendments delete the definition "job access project" which was used as part of a repealed federal statute and add the definition of "large urban transit district," in accordance with HB 1140, 85th Legislature, Regular Session. The amendments add the definition of "small urban transit district," in accordance with HB 1140, 85th Legislature, Regular Session. In the definition of "welfare recipient," the amendments remove a reference to a repealed federal statute.

SUBCHAPTER B, STATE PROGRAMS

Amendments to §31.11, Formula Program, revise the text to account for statutory changes from HB 1140, 85th Legislature, Regular Session, which revise geographical funding categories, address increases in funding, clarify funding allocation description for urban transit districts in the Dallas-Ft. Worth-Arlington urbanized area, remove an expired section, and require a one-time award in FY 2018 to transition from the old formula to the new formula.

Amendments to §31.11(b)(1) indicate the amount of funds available, allocate a portion of those funds to the new funding category "large urban transit districts," show funds as dollar amounts rather than as percentages, and indicate that if appropriated amounts are less than shown, the funds will be reduced proportionately in each funding category.

Amendments to §31.11(b)(1)(A)(i) clarify the description of four urban transit districts in the Dallas-Ft. Worth-Arlington urbanized area. Instead of a description as "tier one," the text explicitly names these four transit districts. The amendments also include the allocated amounts authorized by statute for each of these transit districts.

Amendments to §31.11(b)(1)(A)(ii) describe funding allocation methodology for the small urbanized areas.

Amendments to §31.11(b)(1)(A)(iii) describe funding allocation methodology for the large urbanized areas. The amendments also include a cap on the population figure used in the formula of 299,999 to allocate funds among all eligible large urbanized areas.

Amendments to §31.11(b)(2) remove a reference to an expired provision and add a one-time provision for FY 2018 that requires an allocation to account for the award of additional funds due to the revised rules and available funds.

SUBCHAPTER C, FEDERAL PROGRAMS

Section 31.17, Section 5316 Grant Program, and §31.18, Section 5317 Grant Program, are repealed because the Section 5316 and Section 5317 grant programs were removed from federal statutes by the previous authorizing legislation, known as MAP-21. Projects under §31.17 and §31.18 have been completed and closed out. No impact of the repeal to existing and potential subrecipients is expected.

Amendments to §31.30, Section 5339 Grant Program, reflect revisions to the department's role in administering the Federal Transit Administration (FTA) Section 5339 program. The department will continue to act as the designated recipient in this program for small urban transit districts. However, the department will exercise its option to have small urban transit districts apply directly to the FTA for those funds, upon notification by the department. This is similar to how the FTA Section 5307 program is handled. The department will continue to determine allocations and administer the Section 5339 program for the rural transit districts.

Amendments to §31.30(c) change the description from "transit agencies" to "transit districts" to improve clarity.

Amendments to §31.30(d)(1) revise the formula to use total vehicle miles as reported by transit districts instead of a formula based upon the expected remaining useful life of each vehicle. The amendments also include a minimum amount of one percent of the total program allocation to be awarded to each transit district.

Amendments to §31.30(d)(2) specify that the department will notify the FTA of the formula allocations.

Amendments to §31.30(d)(3) specify that the department will notify the small urban transit districts of the formula allocations.

Amendments to §31.30(d)(4) authorize transit districts to apply for those funds directly with the FTA.

Amendments to §31.30(e)(1) revise the formula to use total vehicle miles as reported by transit districts instead of a formula based upon the expected remaining useful life of each vehicle. The amendments also include a minimum amount of one percent of the total program allocation to be awarded to each transit district.

Amendments to §31.30(f) refer to the latest federal guidance document and remove the reference to fleet condition.

Amendments to §31.30(g) add that recipient projects must also be linked to the asset management plan.

Amendments to §31.31, Section 5310 Grant Program, revise the text to reflect the revised Code of Federal Regulations for the Section 5310 grant program as a result of changes that occur in the Fixing America's Surface Transportation (FAST) Act.

Amendments to §31.31(d) show there is no distinction between primary and alternate recipients of Section 5310 funds for rural and urbanized areas with a population of less than 200,000.

Recipients are urban and rural transit districts, private non-profit organizations, state and local government authorities that coordinate services for seniors and individuals with disabilities, or taxis providing shared-ride service. Recipients that are not transit districts shall coordinate service with transit districts to ensure service does not duplicate existing service.

Amendments to §31.31(e)(2)(A)(ii) clarify the description of vehicles by replacing the term paratransit with smaller accessible vehicles to avoid any confusion with vehicles that are used specifically for the ADA required paratransit service in places with fixed route bus service.

Amendments to §31.31(e)(2)(A)(viii) expand the eligible items to lifts, ramps, and other securement devices to include new technology and to reflect the language in the federal circular.

The amendment to §31.31(e)(2)(A)(x) clarifies the use of the word computer to cover the development of new technology beyond the term microcomputer.

Amendments to §31.31(i)(1)-(2) reflect a change in department procedure. Local stakeholders are consulted during the public outreach process before project selection. Local planning and project development occur as part of the coordinated human service transportation planning process, not as part of Section 5310 public outreach. To increase fairness and equity, the department recommends projects that consider program goals and objectives. The reference to the FTA Circular is updated to 9070.1G.

Amendments to §31.31(i) add paragraph (3) to clarify the requirement for at least 55 percent of the funds allocation to be used for capital expenses, expanding on the existing language that not more than 45 percent of the funds can be used for operating expenses.

Amendments to §31.36, Section 5311 Grant Program, revise the text to describe intent to minimize negative impacts from changes in transit district boundaries, revise the factor used to allocate a portion of the funding from revenue miles to total vehicles miles, revise definitions to more closely follow industry usage, and correct references to implementing regulations. Subsection (b)(5) is added to the list of department objectives to show that transportation district boundary changes are an important factor. This includes changes that occur when Texas counties move from one rural transit district to another or when the counties create a new transit district.

Amendments to §31.36(e)(2)(A)(ii) clarify the description of eligible items for capital expenses.

Amendments to §31.36(e)(2)(A)(ix) and (xiii) revise the language to use the same terminology as used in the federal guidance.

Amendments to §§31.36(e)(2)(C)(iv), (e)(3)and(4), and (g) refer to the latest federal guidance document.

Amendments to §31.36(g)(3) add a one-time award to address changes in transit district boundaries as a discretionary allocation award category. Amendments to §31.36(g)(4) change the data element for calculating this award category from vehicle revenue miles to total vehicle miles.

SUBCHAPTER D, PROGRAM ADMINISTRATION

Amendments to §31.42, Standard Federal Requirements; §31.43, Contracting Requirements; §31.44, Procurement Requirements; §31.45 Accounting and Financial Recordkeeping Requirements; §31.46, Reimbursement Procedures; §31.47, Audit and Project Close-Out Standards; and §31.48 Project Oversight, revise the rules to correct references to federal regulations and update a compliance monitoring practice.

Amendments to §§31.42(a), 31.43(b), 31.44(b), 31.45(b), and 31.47(b) refer to the latest federal regulations. Amendments to §31.48(b)(4) refer to the latest federal regulations and remove a reference to a state program that does not apply. The amendment to §31.48(c)(3) changes a description to indicate a current compliance monitoring practice.

SUBCHAPTER E, PROPERTY MANAGEMENT STANDARDS

Amendments to §31.50, Recordkeeping and Inventory Requirements, and §31.57, Disposition, revise the text to correct references to federal regulations.

Amendments to §31.57(c) and (d)(2)(C) refer to the latest federal regulations.

COMMENTS

No comments on the proposed amendments and repeals were received.

## SUBCHAPTER A. GENERAL

### 43 TAC §31.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

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## SUBCHAPTER B. STATE PROGRAMS

### 43 TAC §31.11

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

*§31.11. Formula Program.*

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each fiscal biennium, certain amounts appropriated for public transportation. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to urban and rural transit districts.

(1) If the appropriated amount to which this subsection applies is at least $69,982,134, the commission will allocate $7,000,000 to large urban transit districts, $20,118,748 to small urban transit districts, and $42,863,386 to rural transit districts. If the appropriated amount is less than $69,982,134, the amounts allocated by this paragraph will be reduced proportionately.

(A) Urban funds available under this section will be allocated to urban transit districts as provided by this subparagraph.

*(i)* If at least $69,982,134 is appropriated as described in paragraph (1) of this subsection, an urban transit district receiving funds under Transportation Code, Section 456.006(b), will be allocated for each year of the biennium an amount equal to the amount received by that district in Fiscal Year 1997. These districts include the cities of Arlington (amount $341,663), Grand Prairie (amount $170,584), Mesquite (amount $142,455), and North Richland Hills (amount $116,134). These allocations will be assigned from the small urban transit district funds. If less than $69,982,134 is appropriated, the amounts allocated by this clause will be reduced proportionately. If more than $69,982,134 is appropriated, an urban transit district to which this clause applies is not eligible for additional funds under paragraph (2) or (3) of this subsection.

*(ii)* One-half of the funds allocated to small urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each small urbanized area relative to the sum of all small urbanized areas. One-half of the funds allocated to small urban transit districts will be performance-based allocations.

*(iii)* One-half of the funds allocated to large urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each large urbanized area relative to the sum of all large urbanized areas served by urban transit districts. A large urban transit district with an urbanized area population of 300,000 or more will have the population adjusted to reflect a population level of 299,999. One-half of the funds allocated to large urban transit districts will be performance-based allocations.

*(iv)* An urban transit district is eligible for a performance-based allocation under clause (ii) or (iii) of this subparagraph, as appropriate, if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the performance-based funding based on the following weighted criteria: 30 percent for local funds per operating expense, 20 percent for ridership per capita, 30 percent for ridership per revenue mile, and 20 percent for revenue miles per operating expense. These criteria may be calculated using the urban transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

*(v)* If an urban transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, including wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that negative impact with an alternate calculation addressing the specific situation. The alternate calculation may be used in subsequent years at the discretion of the department.

(B) Rural funds allocated under this paragraph will be allocated only to rural transit districts in rural areas based upon need and performance as described in clauses (i) and (ii) of this subparagraph.

*(i)* Sixty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a need based allocation giving consideration to population weighted at 75 percent and on land area weighted at 25 percent for each rural area relative to the sum of all rural areas.

*(ii)* Thirty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a performance based allocation. A rural transit district is eligible for funding under this clause if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per revenue mile, and revenue miles per operating expense. These criteria may be calculated using the rural transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

*(iii)* If a rural transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, such as wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that impact with an alternate calculation addressing the specific situation. The alternate calculation may be used in subsequent years at the discretion of the department.

(C) Funds allocated under this section and any local funds may be used for any transit-related activity except that an urban transit district not included in a transit authority but located in an urbanized area that includes one or more transit authorities may use funds allocated under this section only to provide up to:

*(i)* 65 percent of the local share requirement for federally financed projects for capital improvements;

*(ii)* 50 percent of the local share requirement for projects for operating expenses and administrative costs;

*(iii)* 50 percent of the total cost of a public transportation capital improvement, if the urban transit district certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

*(iv)* 65 percent of the local share requirement for federally financed planning activities.

(D) Subject to available appropriation, no award to an urban or rural transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subsection (b)(1)(A) and (B) of this section are subject to revision to comply with this standard.

(2) A one-time allocation of state funds appropriated for Fiscal Year 2018 will be made to eligible urban and rural transit districts, consistent with the direction from Transportation Code, Section 456.021(a), as amended by H.B. 1140, 85th Legislature, Regular Ses-

sion, 2017, to address the impacts of revisions to the state funding formula. This paragraph expires August 31, 2018.

(3) The commission will award on a pro rata basis, competitively, or using a combination of both any appropriated amount that remains after other allocations made under this subsection. In awarding funds under this paragraph, consideration may be given to coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, funds needed to initiate public transportation service in new designated urbanized areas, adjustment for reductions in purchasing power, reductions in air pollution, or any other appropriate factor. Awards under this paragraph are not subject to subsection (b)(1)(D) of this section in succeeding fiscal years.

(c) Change in service area. If part of an urban or rural transit district's service area is changed due to declaration by the U.S. Census Bureau, or if the service area is otherwise altered, the department and the urban or rural transit district shall negotiate an appropriate adjustment in the funding awarded to that urban or rural transit district for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to subsection (b)(1)(D) of this section.

(d) Unobligated funds. Any money under this section that an urban or rural transit district has not applied for before the November commission meeting in the second year of a state fiscal biennium will be administered by the commission under the discretionary program described in §31.13 of this subchapter (relating to Discretionary Program).

(e) Returned funds. Any money under this section that an urban or rural transit district agrees to return to the department will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) Application. To receive funds allocated under this section, a transit district must first submit a completed application, in the form prescribed by the department. The application must include certification that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 U.S.C. §5301. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(g) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

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 November 16, 2017.

TRD-201704622
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Effective date: December 6, 2017
Proposal publication date: September 15, 2017
For further information, please call: (512) 463-8630

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## SUBCHAPTER C. FEDERAL PROGRAMS

### 43 TAC §31.17, §31.18

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

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 November 16, 2017.

TRD-201704623
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Effective date: December 6, 2017
Proposal publication date: September 15, 2017
For further information, please call: (512) 463-8630

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### 43 TAC §§31.30, 31.31, 31.36

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

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 November 16, 2017.

TRD-201704625
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Effective date: December 6, 2017
Proposal publication date: September 15, 2017
For further information, please call: (512) 463-8630

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## SUBCHAPTER D. PROGRAM ADMINISTRATION

**43 TAC §§31.42 - 31.45, 31.47, 31.48**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

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 November 16, 2017.

TRD-201704626
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Effective date: December 6, 2017
Proposal publication date: September 15, 2017
For further information, please call: (512) 463-8630

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## SUBCHAPTER E. PROPERTY MANAGEMENT STANDARDS

**43 TAC §31.50, §31.57**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, §456.022, which provides the commission with authority to adopt rules establishing a formula allocating funds among individual eligible public transportation providers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 455, 456, 458, and 461.

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 November 16, 2017.

TRD-201704627
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Effective date: December 6, 2017
Proposal publication date: September 15, 2017
For further information, please call: (512) 463-8630

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site 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 25, Substantive Rules Applicable to Electric Service Providers pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules.* The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part II, or through the commission's website at www.puc.texas.gov. Project Number 47729 is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039, this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 25 continue to exist. If it is determined during this review that any section of Chapter 25 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. This notice of intention to review Chapter 25 has no effect on the sections as they currently exist.

Comments on the review of Chapter 25 (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. 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 47729.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (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: Texas Government Code §2001.039; Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act; and Title IV, Chapters 161, 163, 181, 182, 183, 184, and 185.

TRD-201704698

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 17, 2017

♦ ♦ ♦

Texas Real Estate Commission

**Title 22, Part 23**

The Texas Real Estate Commission (TREC) files this notice of intention to review Texas Administrative Code, Title 22, Part 23, Chapter 531, Canons of Professional Ethics, Chapter 533, Practice and Procedure, Chapter 534, General Administration, and Chapter 541, Rules Relating to the Provisions of Texas Occupations Code, Chapter 53. This review is undertaken pursuant to Government Code, §2001.039. TREC will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rule review is expected at the TREC meeting in May 2018.

Any questions or comments pertaining to this notice of intention to review should be directed to Kerri Lewis, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mailed to general.counsel@trec.texas.gov within 30 days of publication.

During the review process, TREC may determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TRD-201704694
Kerri Lewis
General Counsel
Texas Real Estate Commission
Filed: November 17, 2017

♦ ♦ ♦

***Lizeth Rosas  8th Grade***

# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §334.208

**Model Institutional Control for Properties**

STATE OF TEXAS

_____ COUNTY

**NOTICE OF (type of substance) CONTAMINATED SITE**

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to the rules and/or requirements of the Texas Commission on Environmental Quality ("TCEQ"), this document is hereby filed in the Deed Records of _____ County, Texas in compliance with the said requirements of the TCEQ:

**I**

This notice pertains to the tract of land (hereinafter, the "Property") described within Exhibit "A" attached hereto and incorporated herein as if set forth at length. The Property is located at_____, in _____, (_____County), Texas. The Property is the former location of a storage tank system that leaked and released (type of substance) into the (list all affected media). Residual subsurface contamination remains at the Property. Notwithstanding such residual contamination, the TCEQ has determined that no additional remediation of the Property is required as of the date of this filing, subject to the provisions of Paragraph II below regarding the use of the Property.

**II**

Cleanup levels established for the Property were based on current and future use of the site for (residential or commercial/industrial) purposes. Without limitation of any other permissible uses, the use of the Property is suitable for (residential or commercial/industrial) purposes. The corrective action plan (does/does not) require continued (post closure care, engineering control measures, or legal control). (Describe) (Add next sentence when the terms of the institutional control place use conditions on the affected area.) Notwithstanding the foregoing, the current or future owner shall notify the TCEQ in writing at least 120 days prior to changes in site use or site condition which violate the terms of this notice.

The corrective action plan developed for this site reduces site risks to meet protection requirements for the site conditions at the time of this filing. However, persons who will be conducting subsurface construction activities such as, but not in way of limitation, the excavation

of soils, installation or repair of subsurface utilities, installation of foundation piers, groundwater extraction, or other such activity may encounter the soils, soil vapors, or groundwater which have been affected by the release. The owner of the Property at the time of any future subsurface construction activities must comply with all environmental, worker protection and other laws, rules and regulations then applicable to the Property.

**III**

The current owner of the Property and/or any facility thereon is (Landowner), whose address is (Street address), (City), (State) (Zip) where more specific information may be obtained from the agents or assigns thereof. The current operator of the Property and/or any facility thereon is (Operator), whose address is (Street address), (City), (State) (Zip).

**IV**

This deed notice is not a representation or warranty by the TCEQ as to the suitability of the Property described within Exhibit A for any particular use or purpose, nor does it constitute any guarantee by the TCEQ that additional remediation will not be required in the future. Further information concerning this matter may be found in the TCEQ Underground Storage Tank Notice of Registration No._____ file and Leaking Petroleum Storage Tank ("LPST") No._____ file, which are available for inspection upon request at the office of the TCEQ in Austin, Texas.

EXECUTED this the_____ day of_____, 20____.

Landowner or Authorized Representative

By:

STATE OF

COUNTY OF

This instrument was acknowledged before me on_____, 20_____, by (Owner).

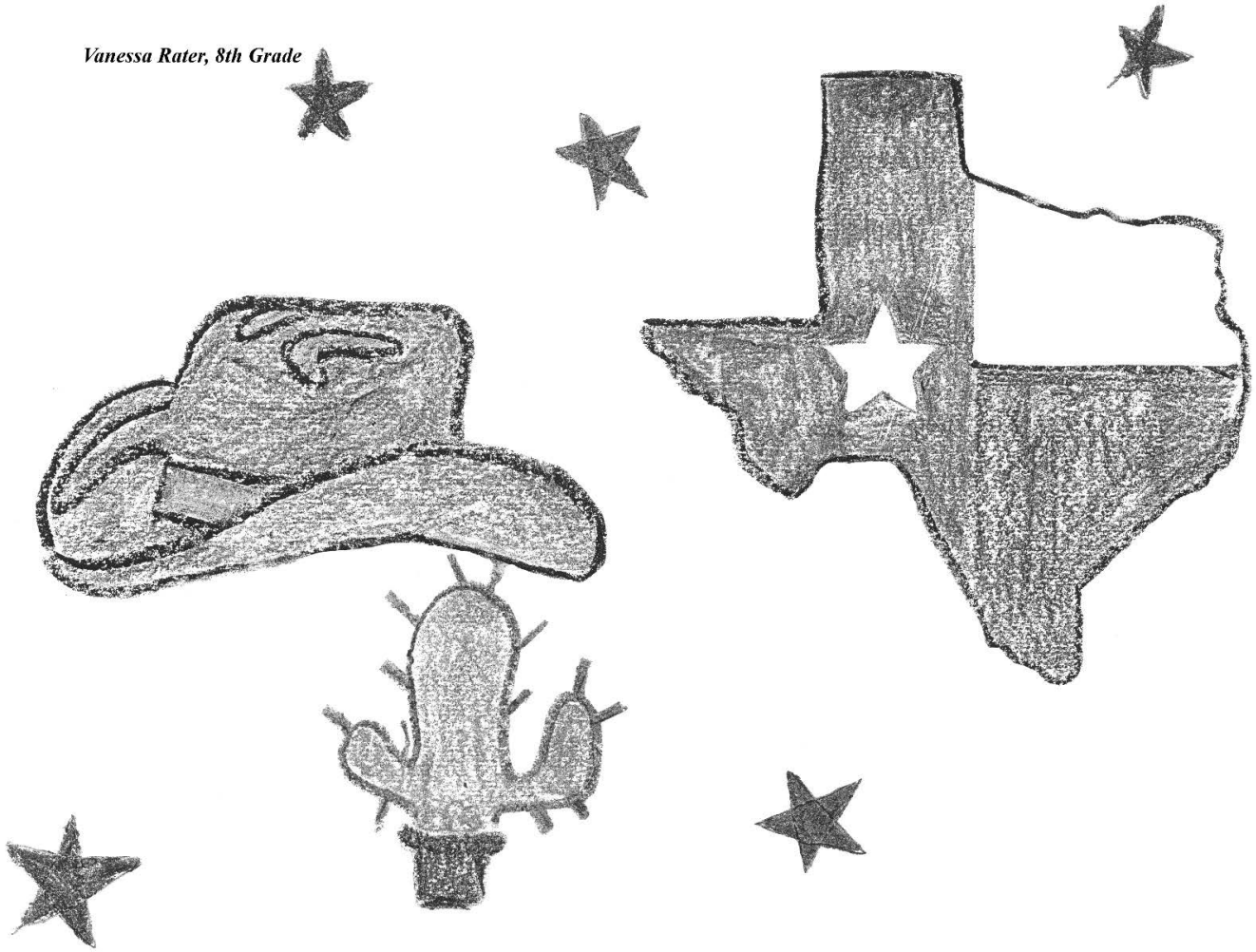
Notary Public in and for the State of

(State)

My Commission Expires:

Typed or Printed Name of Notary

*Vanessa Rater, 8th Grade*



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Banking

Supervisory Memorandum

Pursuant to Texas Occupations Code §53.025, the Texas Department of Banking (the Department) is issuing the following guidelines, which apply to felony convictions of officers, directors, and owners of entities regulated by the Department and the entities themselves. The guidelines state the reasons a particular crime is considered to directly relate to the duties and responsibilities of a particular licensee and any other criterion that affects the licensing decisions of the Department. The guidelines reflect the Department's overarching duty to regulate the fiduciary and financial responsibilities of its licensees.

# TEXAS DEPARTMENT OF BANKING

★ *Dedicated to Excellence in Texas Banking* ★

## SUPERVISORY MEMORANDUM – 1042

**October 17, 2017**

**TO:** All Institutions Regulated by the Texas Department of Banking

**FROM:** Charles G. Cooper, Banking Commissioner

**SUBJECT:** Effect of Criminal Convictions on Licensing

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### OVERVIEW

Texas Occupations Code § 53.021(a) grants the Texas Department of Banking the authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license; (3) an offense listed in 42A.054, Code of Criminal Procedure[1]; or (4) a sexually violent offense, as defined in Article 62.001, Code of Criminal Procedure.

Pursuant to Texas Occupations Code § 53.025, the Department is issuing the following guidelines regarding section 53.021(a)(1), stating the reasons a particular crime is considered to directly relate to the duties and responsibilities of a particular license and any other criterion that affects the licensing decisions of the Department. The Department currently charters or issues licenses or permits to the following entities: state-chartered banks and foreign bank agencies, trust companies, money services businesses, sellers of prepaid funeral benefits, and perpetual care cemeteries. As to money services business licensing, disqualifying convictions are set out in Texas Finance Code § 151.202(e); the below guidelines are intended to supplement what is set out in statute. As to permits to sell or accept money for prepaid funeral benefits, crimes directly related to the fitness for those permits are set out in 7 Texas Administrative Code § 25.31(c).

### POLICY

Pursuant to Texas Occupations Code § 53.021(a)(1), the Department may suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. These guidelines are intended

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[1] This section of the Code of Criminal Procedure lists violent crimes. Examples include murder, aggravated kidnapping, indecency with a child and trafficking of persons.

to reflect the Department's overarching duty to regulate the fiduciary and financial responsibilities of its licensees and apply to felony convictions of officers, directors, owners, and the entity itself.

**State-Chartered Bank and Foreign Bank Agency**

- Operating a state-chartered bank or foreign bank agency involves or may involve activities such as receiving money from consumers, remitting money to third parties, maintaining accounts, making representations to consumers regarding the terms of loans, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting amounts due in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
  A. any offense involving dishonesty or theft;
  B. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
  C. any offense that involves breach of trust or other fiduciary duty;
  D. any offense that involves drug trafficking, terrorist funding, money laundering or a related financial crime;
  E. any violation of the Bank Secrecy Act or USA PATRIOT Act;
  F. any criminal violation of a statute governing debt collection;
  G. failure to file a government report, filing a false government report, or tampering with a government record;
  H. any greater offense that includes an offense described in subparagraphs (A) - (G) of this paragraph as a lesser included offense;
  I. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (H) of this paragraph.

**Trust Company**

- Operating a trust company involves or may involve activities such as acting as trustee and performing fiduciary duties per written agreement or by court order, receiving money and other property for investment in real or personal property, acting as executor, administrator, or trustee of the estate of a deceased person, acting as a custodian, guardian, conservator, or trustee for a minor or incapacitated person, receiving for safekeeping personal property, acting as custodian, assignee, transfer agent, escrow agent, registrar, or receiver, acting as investment advisor, agent, or attorney in fact, or engaging in a financial activity or an activity incidental or complementary to a financial activity. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
  A. any offense involving dishonesty or theft;
  B. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
  C. any offense that involves breach of trust or other fiduciary duty;
  D. any offense that involves drug trafficking, terrorist funding, money laundering or a related financial crime;
  E. any violation of the Bank Secrecy Act or USA PATRIOT Act;

F. failure to file a government report, filing a false government report, or tampering with a government record;
G. any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;
H. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

**Money Services Business**

- Operating a money services business involves or may involve activities such as receiving money, bullion, or specie from consumers, remitting money, bullion, or specie to third parties, maintaining accounts, exchanging currency, transporting currency, and making representations to consumers regarding the intent to make available deposited money, bullion, or specie. Consequently, in addition to the disqualifying convictions set out in Texas Finance Code § 151.202(e), the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
  A. any offense involving dishonesty or theft;
  B. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
  C. any offense that involves breach of trust or other fiduciary duty;
  D. failure to file a government report, filing a false government report, or tampering with a government record;
  E. any greater offense that includes an offense described in subparagraphs (A) - (D) of this paragraph as a lesser included offense;
  F. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (E) of this paragraph.

**Seller of Prepaid Funeral Benefits**

- See 7 Texas Administrative Code § 25.31(c).

**Perpetual Care Cemetery**

- Operating a perpetual care cemetery involves or may involve activities such as making representations to prospective purchasers of burial rights, collection and investment of perpetual care trust funds, continuing the general maintenance and care of the cemetery property, and maintaining adequate records as required by 7 Texas Administrative Code § 26.2. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:
  A. any offense involving dishonesty or theft;
  B. any offense that involves the desecration of a cemetery, abuse of a corpse, or related crime;
  C. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
  D. any offense that involves breach of trust or other fiduciary duty;
  E. failure to file a government report, filing a false government report, or tampering with a government record;

F. any greater offense that includes an offense described in subparagraphs (A) - (E) of this paragraph as a lesser included offense;
G. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (F) of this paragraph.

**Additional Factors**

In determining whether a criminal offense directly relates to the duties and responsibilities of holding any of the above charters, licenses, or permits, the Department will consider the following factors, as specified in Texas Occupations Code § 53.022:

- the nature and seriousness of the crime;
- the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the Department will consider the following factors, as specified in Texas Occupations Code § 53.023:

- the extent and nature of the person's past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and
- evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:
    - prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
    - the sheriff or chief of police in the community where the person resides; and
    - other persons in contact with the convicted person.

The purpose of these guidelines is to give notice to the types of crimes that *may* result in adverse action. Moreover, these guidelines are not intended to be an exhaustive list nor do they prohibit the Department from considering crimes not listed herein. After due consideration of the factors listed above, the Department may find that a conviction not described herein renders a person unfit to hold a license.

TRD-201704689
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: November 17, 2017

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## Capital Area Rural Transportation System

### Publication of Notice: Open House for Proposed Eastside Bus Plaza

CARTS has sold it's Austin Headquarters on East 6th Street. Since the mid-1990's this location has also served as the Austin Station where passengers transfer buses for destinations throughout CARTS 9-county service area. CARTS has been working with Capital Metro, the City of Austin and TxDOT on developing a new multimodal/bus plaza in East Austin. CARTS invites the community to an Eastside Bus Plaza project open house that will be held **December 6, 2017, 5-7 p.m.** at CARTS HQ located at 2010 East 6th Street, Austin, Texas. There will be a brief presentation starting at 6 p.m. Light refreshments will be served. The open house is an opportunity for the public to learn more about the project and provide comment on the proposed multi modal hub.

For more information, please contact (512) 478-RIDE (7433) or visit our website at RideCARTS.com.

TRD-201704602
Dave Marsh
General Manager
Capital Area Rural Transportation System
Filed: November 15, 2017

♦ ♦ ♦

## Office of Consumer Credit Commissioner

### Request for Official Interpretation

Under Texas Finance Code, §14.108, the Consumer Credit Commissioner of Texas may issue official interpretations of Texas Finance Code, Title 4, Subtitle A or B, after approval of the official interpretation by the Finance Commission. The provisions of Texas Government Code, Chapter 2001 that relate to the adoption of an administrative rule do not apply to the issuance of an official interpretation under this section.

The commissioner has received the following request for an official interpretation:

Request Number 2017-03, from Robert T. Mowrey of Dallas, Texas. The request concerns the following issue: "The issue for consideration by the Commissioner is whether the department requires, pursuant to Texas law or otherwise, a motor vehicle dealership to include a paper or electronic copy of the privacy policy notice in the transaction file as part of a retail installment sales contract, in addition to providing a copy of the privacy policy notice to the customer."

Interested parties may submit briefs and proposals pertaining to the issue raised by the requestor to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, briefs and proposals must be received on or before 5:00 p.m. central time on the 31st day after the date this request is published in the *Texas Register*.

TRD-201704693
Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
Filed: November 17, 2017

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## Credit Union Department

### Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Neighborhood Credit Union (Dallas) seeking approval to merge with Good Street Baptist Church Federal Credit Union (Dallas), with Neighborhood Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201704674
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 16, 2017

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## Texas Education Agency

### Notice of Correction: Request for Applications Concerning the 2018-2019 Pathways in Technology Early College High Schools Planning Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-18-102 Concerning the 2018-2019 Pathways in Technology Early College High Schools (P-TECH) Planning Grant in the November 10, 2017, issue of the *Texas Register* (42 TexReg 6393).

The TEA is amending the name of the project, filing authority, and project amounts.

The new name of the project is 2018-2019 Pathways in Technology Early College High School (P-TECH) and Industry Cluster Innovative Academies (ICIA) Planning Grant. The P-TECH funds are authorized by General Appropriations Act, Article III, Rider 67, 85th Texas Legislature, Regular Session, 2017; and Texas Education Code (TEC), §§29.551-29.556 (P-TECH). The ICIA funds are authorized by General Appropriations Act, Article III, Rider 49, 85th Texas Legislature, Regular Session, 2017; TEC, §29.908; and the Workforce Innovation and Opportunity Act, Dislocated Workers §17.278, and Adult Activities §17.258. Approximately $1 million is available for funding the 2018-2019 P-TECH and ICIA Planning Grant. It is anticipated that approximately 20 grants will be awarded in the amount of up to $50,000 each. This project is funded 50 percent with federal funds and 50 percent with state funds.

All other sections of the notice remain the same.

TRD-201704687

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2017

♦ ♦ ♦

## Notice of Correction: Request for Applications Concerning the 2018-2020 Pathways in Technology Early College High Schools Success Grant

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-18-101 Concerning the 2018-2020 Pathways in Technology Early College High Schools (P-TECH) Success Grant in the November 10, 2017 issue of the *Texas Register* (42 TexReg 6394).

The TEA is amending the name of the project, filing authority, and project amounts.

The new name of the project is 2018-2020 Pathways in Technology Early College High School (P-TECH) and Industry Cluster Innovative Academies (ICIA) Success Grant. The P-TECH funds are authorized by General Appropriations Act, Article III, Rider 67, 85th Texas Legislature, Regular Session, 2017; and Texas Education Code (TEC), §§29.551-29.556 (P-TECH). The ICIA funds are authorized by General Appropriations Act, Article III, Rider 49, 85th Texas Legislature, Regular Session, 2017; TEC, §29.908; and the Workforce Innovation and Opportunity Act, Dislocated Workers §17.278, and Adult Activities §17.258. Approximately $3.9 million is available for funding the 2018-2020 P-TECH and ICIA Success Grant. It is anticipated that approximately 15 grants will be awarded in the amount of up to $260,000 each. This project is funded 64 percent with federal funds and 36 percent with state funds.

All other sections of the notice remain the same.

TRD-201704688
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2017

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## Request for Applications Concerning the 2018-2020 Public Charter School Program Start-Up Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-18-104 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter School Program start-up funds, and are one of the following: (1) a campus charter school authorized by the local board of trustees in Boles Independent School District (ISD), Dallas ISD, Edgewood ISD, Fort Bend ISD, Longview ISD, Palestine ISD, or San Antonio ISD pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before January 26, 2018, that submits all required documentation as stated in the RFA; (2) an open-enrollment charter school authorized by the commissioner of education under the Generation 22 charter application pursuant to the TEC, Chapter 12, Subchapter D; or (3) an open-enrollment charter school designated by the commissioner for the 2018-2019 school year as a new school under an existing charter. A campus charter school must apply through its public school district, and the application must be signed by the district's superintendent or the appropriate designee. Any campus charter school authorized by the local board of trustees in Boles ISD, Edgewood ISD, and Fort Bend ISD for the 2018-2019 school year is considered eligible to apply for the grant. However, the U.S. Department of Education (USDE) must approve the district's charter authorizing policy prior to the charter receiving grant funding, if awarded. Charters awarded by the commissioner under the Generation 22 application that have been notified of contingencies to be cleared prior to receiving a charter contract are considered eligible to apply for the grant. However, these charters should be diligent in working with TEA to complete the contingency process as all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to receiving grant funding, if awarded. Charters submitting an application for a New School Designation for the 2018-2019 school year are considered eligible to apply for the grant. However, the commissioner must designate the campus as a new school under an existing charter prior to the charter receiving grant funding, if awarded.

Description. The purpose and goals of the 2018-2020 Public Charter School Program Start-Up Grant are to provide financial assistance for the start-up and implementation of charter schools and expand the number of high-quality charter schools available to students across the state.

Dates of Project. The 2018-2020 Public Charter School Program Start-Up Grant will be implemented primarily during the 2018-2019 and 2019-2020 school years. Applicants should plan for a starting date of no earlier than March 15, 2018, and an ending date of no later than July 31, 2020, contingent on the continued availability of federal funding.

Project Amount. Approximately $8 million is available for funding the 2018-2020 Public Charter School Program Start-Up Grant. It is anticipated that approximately 10 to 15 grants of no more than $800,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Friday, December 15, 2017, from 10:00 a.m. to 12:00 p.m. Register for the webinar at https://attendee.gotowebinar.com/register/98024047108026626. Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.texas.gov or faxed to (512) 463-9732 prior to Friday, December 8, 2017. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list.

Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.texas.gov no later than Monday, December 18, 2017. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, January 2, 2018. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, January 30, 2018, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201704686
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: November 16, 2017

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 5, 2018. 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 January 5, 2018. 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: Agri-Empresa LLC; DOCKET NUMBER: 2017-1062-AIR-E; IDENTIFIER: RN105994370; LOCATION: Wellman, Terry County; TYPE OF FACILITY: bulk mineral product handling site; RULES VIOLATED: 30 TAC §106.144(1), Permit by Rule Registration Number 93416, and Texas Health and Safety Code (THSC), §382.085(b), by failing to transport all material in a closed conveying system and vent all exhaust air to the atmosphere through a fabric filter; and 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b) by failing to obtain authorization prior to commencing construction and operation of an additional source of air contaminants; PENALTY: $2,250; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: ALLEN KELLER COMPANY I, LLC; DOCKET NUMBER: 2017-1255-WQ-E; IDENTIFIER: RN108168964; LOCATION: Junction, Kimble County; TYPE OF FACILITY: aggregate production operations; RULES VIOLATED: 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 under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-4935; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: Bill Mayhew dba Wood Trail Water Supply; DOCKET NUMBER: 2017-1211-PWS-E; IDENTIFIER: RN101244523; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(F)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide the minimum well capacity of 0.6 gallons per minute per connection; 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; and 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to provide the operating records and make them readily available and accessible for review to the executive director upon request; PENALTY: $150; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: CATEX Acquisitions, LLC; DOCKET NUMBER: 2017-0673-PWS-E; IDENTIFIER: RN101217347; LOCATION: Giddings, Lee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) by the tenth day of the month following the end of each quarter for the third quarter of 2015 through the fourth quarter of 2016, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the third quarter of 2015 through the third quarter of 2016; 30 TAC §290.117(c)(2)(B), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED for the January 1, 2015 - December 31, 2015 and January 1, 2016 - December 31, 2016, monitoring periods, and failing to provide public notification and submit a copy of the public notification to the ED regarding the

failure to collect lead and copper tap samples for the January 1, 2016 - December 31, 2016, monitoring period; 30 TAC §290.109(d)(2)(A)(ii) (formerly §290.109(c)(2)(A)(ii)), and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code, §341.033(d), by failing to collect a routine distribution water sample for coliform analysis for the months of September 2015 - March 2016 and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect a routine distribution water sample for the months of November 2015 - March 2016; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar years 2014 and 2015; PENALTY: $3,968; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: Celanese Limited; DOCKET NUMBER: 2017-1076-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 55046, Special Conditions Number 1, and Federal Operating Permit Number O1893, General Terms and Conditions and Special Terms and Conditions Number 31, by failing to prevent unauthorized emissions; PENALTY: $5,475; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Channel Energy Center, LLC; DOCKET NUMBER: 2017-0793-AIR-E; IDENTIFIER: RN100213107; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: cogeneration of energy; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Numbers 42179, PSDTX955M1, and N021M1, Special Conditions (SC) Number 2.A and Federal Operating Permit (FOP) Number O2084, Special Terms and Conditions (STC) Number 10, by failing to comply with the permitted emissions limit; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), NSR Permit Numbers 42179, PSDTX955M1, and N021M1, SC Numbers 6.A and 33, and FOP Number O2084, STC Numbers 1.A and 10, by failing to comply with the permitted maximum allowable emissions rate and concentration limit; PENALTY: $6,301; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Deer Creek Ranch Water Company, LLC; DOCKET NUMBER: 2017-0627-PWS-E; IDENTIFIER: RN100822527; LOCATION: Dripping Springs, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(2)(H) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide emergency power that will deliver water at a minimum rate of 0.35 gallon per minute per connection to the distribution system in the event of the loss of normal power supply; and 30 TAC §290.45(b)(2)(G) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; PENALTY: $260; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(8) COMPANY: Enbridge Pipelines (Texas Gathering) L.P.; DOCKET NUMBER: 2017-1252-AIR-E; IDENTIFIER: RN106175219; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: natural gas compression and dehydration station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O3820, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(A) and (C), FOP Number O3449/Oil and Gas General Operating Permit Number 514, Site-wide Requirements (b)(2), and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $7,838; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: Gary Hatchett dba Li'l Haden's Playhouse and Learning Center Too and LI'L HADEN'S CENTERS, INCORPORATED dba Li'l Haden's Playhouse and Learning Center Too; DOCKET NO: 2016-2125-PWS-E; IDENTIFIER: RN109472084; LOCATION: Lubbock, Lubbock 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 a water supply well; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot; 30 TAC §290.41(c)(3)(N), by failing to provide the facility's well with a flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(3)(O), by failing to protect the well with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.45(d)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; and 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: $4,347; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(10) COMPANY: HERITAGE MINISTRIES; DOCKET NUMBER: 2017-1142-PWS-E; IDENTIFIER: RN109792440; LOCATION: Waco, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(q)(1), by failing to issue a boil water notice to customers throughout the distribution system or in the affected area(s) of the distribution system as soon as possible, but in no case later than 24 hours as a special precaution due to a lack of disinfection equipment;

and 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the facility; PENALTY: $950; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: HFOTCO, LLC; DOCKET NUMBER: 2017-0819-AIR-E; IDENTIFIER: RN100223445; LOCATION: Houston, Harris County; TYPE OF FACILITY: Petrochemical; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1093, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Jo Hunsberger, (512) 239-1274; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Keith McNeese dba Bottom of the Hill; DOCKET NUMBER: 2016-2145-MLM-E; IDENTIFIER: RN105814842; LOCATION: Justiceburg, Garza County; TYPE OF FACILITY: convenience store and restaurant and public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends a minimum of three feet from the well casing in all directions with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with 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 a flow measuring device for the facility's well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences or establishments where an actual or potential contamination hazard exists; 30 TAC §290.45(d)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.46(n)(1), by failing to maintain plans, specifications, maps and other pertinent information on file at the facility to facilitate the operation and maintenance of the water system's facilities and equipment; 30 TAC §111.201 and THSC, §382.085(b), by failing caused, suffered, allowed, or permitted outdoor burning within the State of Texas; and 30 TAC §330.15(a) and (c) and TWC, §26.121, by failing to caused, suffered, allowed or permitted the unauthorized disposal of municipal solid waste; PENALTY: $4,649; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(13) COMPANY: MILO DRIVE, INCORPORATED; DOCKET NUMBER: 2017-1012-EAQ-E; IDENTIFIER: RN105116677; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §213.4(k), by failing to maintain temporary and permanent best management practices; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Montgomery County Municipal Utility District 60; DOCKET NUMBER: 2017-0956-PWS-E; IDENTIFIER: RN101414597; LOCATION: The Woodlands, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the executive director along with certification that the consumer notification has been distributed for the January 1, 2012 - December 31, 2014, monitoring period; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $517; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: NARAYANSWARUP, INCORPORATED dba Silverlake Plaza Food Mart; DOCKET NUMBER: 2017-0549-PST-E; IDENTIFIER: RN102492055; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.76(1), by failing to perform initial response action within 24 hours of a release from an underground storage tank (UST) system; 30 TAC §334.77(b) and §334.78(c), by failing to submit a report to the TCEQ summarizing the initial abatement steps taken within 20 days after a release of a regulated substance from a UST system also, failing to submit a site assessment report within 45 days after a confirmed release of a regulated substance from a UST system; and 30 TAC §334.48(a), by failing to ensure the UST system is operated, maintained, and managed in a manner that will prevent releases of regulated substances; PENALTY: $11,350; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Phillips 66 Pipeline LLC; DOCKET NUMBER: 2017-1218-AIR-E; IDENTIFIER: RN100221506; LOCATION: Sundown, Cochran County; TYPE OF FACILITY: pump station; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O2750, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-4935; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(17) COMPANY: Southland Independent School District; DOCKET NUMBER: 2017-1206-PWS-E; IDENTIFIER: RN101197168; LOCATION: Southland, Garza County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(1)(B), by failing to conduct annual inspections of the facility's three pressure tanks; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: $478; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: SPORT CYCLES, INCORPORATED; DOCKET NUMBER: 2017-1027-PST-E; IDENTIFIER: RN101867489; LOCATION: Tomball, Harris County; TYPE OF FACILITY: facility with out-of-service tanks; RULES VIOLATED: 30 TAC §334.7(d)(1)(A), (B), and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the underground storage tanks (USTs), within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; and 30 TAC §§37.867(a), 334.47(a)(2), 334.49, 334.50, and 334.54(b)(2) and (c)(1) and (2), and TWC, §26.3475(c)(1) and (d), by failing to permanently remove from service, no later than 60

days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements and, failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $11,125; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: UNITED FIBERGLASS, INCORPORATED; DOCKET NUMBER: 2016-1536-AIR-E; IDENTIFIER: RN105915011; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: plastic composite manufacturing; RULES VIOLATED: 30 TAC §§101.20(2), 113.1060, and 122.143(4), 40 Code of Federal Regulations §63.5910(b)(3) and (4), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O3558, Special Terms and Conditions (STC) Numbers 1.E and 4, by failing to submit timely semi-annual Maximum Achievable Control Technology compliance reports; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), New Source Review (NSR) Permit Number 95828, Special Conditions (SC) Number 9, and FOP Number O3558, STC Number 5, by failing to implement adaptor modifications to the resin gun system; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 95828, SC Number 10.B, and FOP Number O3558, STC Number 5, by failing to limit the styrene content of resin used in operation from exceeding 44% by weight; 30 TAC §122.143(4) and §122.145(2)(B), THSC, §382.085(b), and FOP Number O3558, General Terms and Conditions (GTC), by failing to submit a deviation report when deviations were known to have occurred; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3558, GTC, by failing to report all instances of deviations; PENALTY: $18,851; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(20) COMPANY: Western Dairy Transport, L.L.C.; DOCKET NUMBER: 2017-1117-AIR-E; IDENTIFIER: RN105139372; LOCATION: Dublin, Erath County; TYPE OF FACILITY: milk transportation; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: $876; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4574; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201704607
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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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 **January 5, 2018.** 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 January 5, 2018.** 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: Cliff J. Chambers; DOCKET NUMBER: 2017-0339-OSS-E; TCEQ ID NUMBER: RN103749859; LOCATION: 7075 Highway 326 North, Kountze, Hardin County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: Texas Health and Safety Code, §366.051(c) and 30 TAC §285.61(4), by failing to ensure that an authorization to construct had been obtained prior to beginning construction of an OSSF; PENALTY: $527; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: NEW K & T QUICK STOP, INC. dba K & H FOOD STORE; DOCKET NUMBER: 2017-0821-PST-E; TCEQ ID NUMBER: RN101570570; LOCATION: 809 West Northside Drive, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 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; PENALTY: $11,948; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201704605
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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## Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, 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 Prelim-

inary 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 **January 5, 2018.** 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 January 5, 2018.** 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: ABHH INTERNATIONAL LLC and Mohammad H. Khan; DOCKET NUMBER: 2016-1893-PST-E; TCEQ ID NUMBER: RN101630572; LOCATION: 1717 Nederland Avenue, Nederland, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(2), by failing to monitor an out-of-service UST system for releases; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $13,125; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Albo Enterprises, Inc.; DOCKET NUMBER: 2017-0230-PST-E; TCEQ ID NUMBER: RN100810555; LOCATION: 12496 Montana Avenue, El Paso, El Paso County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.601(b) and §334.606 and TCEQ AO Docket Number 2014-1135-PST-E, Ordering Provision Number 2.a.i., by failing to comply with UST operator training requirements; and 30 TAC §334.47(a)(2) and TCEQ AO Docket Number 2014-1135-PST-E, Ordering Provision Number 2.a.iii., by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $101,250; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Kelli D. Cook, Danny Allen Cook, and Cook & Clader Construction, LLC; DOCKET NUMBER: 2016-0558-WQ-E; TCEQ ID NUMBERS: RN108004326, RN108036526, and RN108003930; LOCATIONS: on the north side of a private road between County Road 128 (Jessie Thompson Road) and Nubbin Fuller Road, which the Rusk County Appraisal District defines as Abstract 519, TJ Martin Survey; Property Identification. 24170 (Pit-A) (Site Number 1), on the south side of private road between County Road 128 (Jessie Thompson Road) and Nubbin Fuller Road, which the Rusk County Appraisal District defines as Abstract 732; J Smith Survey; Property Identification. 7920 (Pit-B) (Site Number 2), and 2324 North County Road 4144 and North County Road 4105, which the Rusk County Appraisal District defines as Abstract 7; F Cordova Survey; Property Identification. 49230 (Pit-C) (Site Number 3), Overton, Rusk County; TYPE OF FACILITIES: aggregate production operations (APOs); RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent the discharge of other waste into or adjacent to any water in the state from Site Numbers 1, 2, and 3; 30 TAC §342.25(b), by failing to register Site Numbers 1 and 3 as an APO no later than the tenth business day before the beginning date of regulated activities; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000 from Site Numbers 2 and 3; PENALTY: $52,500; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Dao Pham and Lai Nguyen dba Heights Super Cleaners; DOCKET NUMBER: 2017-0864-DCL; TCEQ ID NUMBER: RN103970562; LOCATION: 740 East 20th Street, Suite A, Houston, Harris County; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: Texas Health and Safety Code, §374.102, 30 TAC §337.11(e), and TCEQ AO Docket Number 2014-0326-DCL-E, Ordering Provision Number 3.b.i., by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.10(b) and TCEQ AO Docket Number 2014-0326-DCL-E, Ordering Provision Number 3.b.i., by failing to provide written notice to the executive director of changes made at the facility within 30 days from the date of the occurrence of the changes; 30 TAC §337.20(e)(6)(B) and §337.70(a) and TCEQ AO Docket Number 2014-0326-DCL-E, Ordering Provision Number 3.a., by failing to maintain dry cleaning and/or drop station facility records and make them immediately available for inspection upon request by agency personnel; and TWC, §5.702, 30 TAC §337.14(a), and TCEQ AO Docket Number 2014-0326-DCL-E, Ordering Provision Number 3.b.ii., by failing to pay outstanding dry cleaner fees for TCEQ Financial Account Number 24003728 for Fiscal Years 2009 through 2013; PENALTY: $3,492; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Fritz Town Entertainment LLC; DOCKET NUMBER: 2015-1821-PWS-E; TCEQ ID NUMBER: RN104497466; LOCATION: 2254 South United States Highway 87, Fredericksburg, Gillespie County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f), by failing to collect routine distribution water samples for coliform analysis and failing to post public notification and submit a copy of the public notification to the executive director; PENALTY: $1,815; STAFF

ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: THE CAMPGROUND INVESTMENT GROUP, INC. dba American Campground; DOCKET NUMBER: 2016-1881-PWS-E; TCEQ ID NUMBER: RN102676715; LOCATION: 10348 West United States Highway 90 near Lake View, Val Verde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(4) and §290.107(e), by failing to report the results of synthetic organic chemical (SOC) contaminants (method 504, 515 and 531) sampling to the executive director (ED); 30 TAC §§290.46(f)(4), 290.106(e), 290.107(e), 290.115(e), and 290.122(c)(2)(A) and (f), by failing to report the results of nitrate, SOC (group 5) contaminants, and Stage 2 Disinfection Byproducts (DBP2) sampling to the ED for the January 1 - December 31, 2015 monitoring period and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to report the results of DBP2 sampling to the ED; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with the compliance monitoring data; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92330023; PENALTY: $723; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(7) COMPANY: Luciano Trevino; DOCKET NUMBER: 2017-0282-WQ-E; TCEQ ID NUMBER: RN109241158; LOCATION: approximately 0.55 mile north of Split Rail Lane on the east side of State Highway 304, Bastrop County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: TWC, §26.121, 40 Code of Federal Regulations §122.26(c), and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; and 30 TAC §342.25(b), by failing to register the site as an APO no later than the tenth business day before the beginning date of regulated activities; PENALTY: $6,312; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

TRD-201704606
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, §§114.620, 114.622, 114.623, 114.644, 114.650 - 114.653, and 114.680 - 114.682; the repeal of §§114.648, 114.658, 114.660 - 114.662, and 114.670 - 114.672, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would implement portions of Senate Bill (SB) 1731 enacted by the 85th Texas Legislature, 2017, Regular Session, which amended statutory provisions pertaining to programs that are part of the Texas Emissions Reduction Plan. The proposed rulemaking would amend existing rules implementing the Diesel Emissions Reduction Incentive Program established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter C; the Texas Clean School Bus Program established under THSC, Chapter 390; the Texas Clean Fleet Program established under THSC, Chapter 392; and the Seaport and Rail Yard Areas Emissions Reduction Program established under THSC, Chapter 386, Subchapter D-1. The proposed changes include updates and revisions to program criteria and processes.

The commission will hold a public hearing on this proposal in Austin on December 11, 2017, 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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www1.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 2017-031-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

TRD-201704638
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114, Subchapter K, Division 2

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 114, Subchapter K, Division 2, Light-Duty Motor Vehicle Purchase or Lease Incentive Program, under the requirements of Texas Government Code, Chapter 2001, Subchapter B. The commission is proposing the repeal of §§114.610 - 114.612 and §114.616; and new §§114.610 - 114.613.

The proposed rulemaking would implement Senate Bill (SB) 1731 from the 85th Texas Legislature, 2017, Regular Session, to implement a new Light-Duty Motor Vehicle Purchase or Lease Incentive Program (program) established under Texas Health and Safety Code, Chapter 386, Subchapter D. The proposed rulemaking would repeal the criteria and requirements pertaining to the previous program that ended in 2015, and would replace those sections with the criteria and requirements for the new program established under SB 1731.

The commission will hold a public hearing on this proposal in Austin on December 11, 2017, at 2:00 p.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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www1.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 2017-030-114-AI. The comment period closes on December 22, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Steve Dayton, Implementation Grants Section, at (512) 239-6824.

TRD-201704654
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 334

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 334, Underground and Aboveground Storage Tanks, §§334.2, 334.4, 334.6, 334.7, 334.10, 334.19, 334.42, 334.45 - 334.52, 334.54, 334.55, 334.72, 334.74, 334.123 - 334.125, 334.127, 334.208, 334.407, 334.424, 334.491, 334.496, 334.499, 334.602, 334.603, and 334.605, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would include federal rule updates required by the United States Environmental Protection Agency (EPA) pertaining to underground storage tanks (USTs). In addition to updates to EPA's UST regulations, this rulemaking also proposes minor rule revisions relating to fee on delivery of petroleum products and the funding of the Petroleum Storage Tank Remediation account (House Bill 7, 84th Texas Legislature, Regular Session, which amended Texas Water Code (TWC), §26.3574(b-1)), and rule revisions related to the fee on the delivery of certain petroleum products (Senate Bill 1557, 85th Texas Legislature, Regular Session, which amended TWC, §26.3574(a) - (i)).

The commission will hold a public hearing on this proposal in Austin on January 9, 2018, at 2:00 p.m. in Building E, Conference Room 201S (Agenda Room), 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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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 (800)-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www1.tceq.texas.gov/rules/ecomments/. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-019-334-CE. The comment period closes January 9, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Cynthia Gandee, Program Support Section, at (512) 239-7025.

TRD-201704685
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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## Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 39 and 55 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 39, Public Notice, §39.411 and §39.603; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, §55.152, and to the State Implementation Plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Water Code, §5.103; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

If adopted, the amendments to §§39.411(e)(10) and (11)(A)(v) and (vi) and (F), (f) (introductory paragraph), and (f)(8); 39.603; and 55.152(a)(3), (4), (7), and (8) will be submitted to EPA as revisions to the SIP.

The proposed rulemaking would implement Senate Bill 1045 from the 85th Texas Legislature, 2017, Regular Session, relating to consolidation of public notice requirements for certain air quality permit applications.

The commission will hold a public hearing on this proposal in Austin on January 3, 2018, 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, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: http://www1.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 2017-027-039-LS. The comment period closes January 3, 2018. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Janis Hudson, Environmental Law Division, at (512) 239-0466.

TRD-201704648
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 16, 2017

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### Request for Members to Serve - Water Utility Operator Licensing Advisory Committee

The Texas Commission on Environmental Quality (TCEQ) is seeking a total of seven members to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (the Committee).

The Committee membership represents various geographic areas of the state, ethnicity, businesses, governments, associations, and industries. If you have served on this advisory committee or applied in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed each time.

The authority for the committee is found in 30 TAC Chapter 5. The objectives of the 13-member committee are: 1) to review training and educational material to promote quality education and training; 2) to review Job Analysis exam validations and to advise and assist regarding licensing requirements; 3) to assist with the review of rules, regulations, guidance documents, and policy statements; 4) to represent a diversity of viewpoints; 5) and to promote interaction with outside organizations.

All appointments will be made by the TCEQ commissioners. The committee meets as needed, usually four times a year. Meetings are held at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, and last up to four hours. No financial compensation is available. Additional information regarding the Committee is available at the following website: http://www.tceq.texas.gov/licensing/groups/wuoc_comm.html.

To apply, download and complete the Water Utility Operator Licensing Advisory Committee (WUOLAC) application from our website (previously listed), or contact us directly to request an application be mailed to you. You may submit a resume in addition to the application, but not in lieu of the application.

Completed Applications must be received at TCEQ by 5:00 p.m., on January 5, 2018. Applications may be delivered to Colby Eaves by email (colby.eaves@tceq.texas.gov), fax (512-239-6316), or U.S. mail: Colby Eaves, Occupational Licensing Section, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201704601
Robert Martinez
Director, Environmental Law Division
Texas Commission Environmental Quality
Filed: November 15, 2017

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## Texas Ethics Commission

### List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

**Deadline: Lobby Activities Report due July 11, 2016**

Frank R. Santos, 1122 Colorado St., Ste. 200, Austin, Texas 78701

**Deadline: Lobby Activities Report due July 10, 2017**

Frank R. Santos, 1122 Colorado St., Ste. 200, Austin, Texas 78701

**Deadline: Lobby Activities Report due August 10, 2017**

Frank R. Santos, 1122 Colorado St., Ste. 200, Austin, Texas 78701

TRD-201704608
Seana Willing
Executive Director
Texas Ethics Commission
Filed: November 16, 2017

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## Texas Health and Human Services Commission

### Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Project Quote Request for Proposals to the previously procured contractors awarded through the Multi-Consultant Contractor Pool RFP #529-16-0083. The Project Quote Request for Proposals is for Consultant Services to assist in fulfilling requirements associated with Riders 219, and 220 in the State of Texas Appropriations Act from the 85th Texas Legislature. HHSC seeks to contract with a single qualified consultant for all of the scope.

The primary objective for this Project Quote Request is to seek the assistance of a consultant with certain expertise to assist HHSC with analytical reporting related to Parts A, B, C, and D of Rider 220; the evaluation of Medicaid and CHIP Managed Care in Texas as well as an analysis and report for Rider 219 regarding the administration of prescription drug benefits.

Consulting services will include a study and report on potential cost savings in the administration of prescription drug benefits (Rider 219); a comprehensive review of, and evaluation of managed care (Rider 220 Part a) in Texas Medicaid and Children's Health Insurance Program (CHIP); a review and report on preliminary findings of the agency's contract management and oversight function for Medicaid and CHIP managed care contracts (Rider 220 Part b); a study of Medicaid managed care rate setting processes and methodologies in other states (Rider 220 Part c); and a review of administrative expenses incurred by managed care organizations (MCOs) in Medicaid and

CHIP (Rider 220 Part d), and a final comprehensive report inclusive of the results of all of the above. The Rider 219 review will be addressed and included in the final comprehensive report, as well as a separate report specifically to address Rider 219.

Health and Human Services Commission's Sole Point-Of-Contact for Project Quote Request

April Elyabouri, CTCM

Health and Human Services Commission

Contract Administration and Provider Monitoring

4900 Lamar Blvd, H340

Austin, Texas 78751

(512) 424-6948

April.Elyabouri@hhsc.state.tx.us

All proposals must be received at the above-referenced address on or before 3:00 PM Central Time on December 27, 2017. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the Project Quote Request for Proposals. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this Project Quote Request for Proposals.

TRD-201704690
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 17, 2017

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### Public Notice - Methodology for Determining Caseload Reduction Credit for the Temporary Assistance for Needy Families Program for Federal Fiscal Year 2018

The Texas Health and Human Services Commission (HHSC) announces its intent to seek comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2018. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2017. This methodology and the resulting estimated caseload reduction credit will be submitted for approval to the United States Department of Health and Human Services, Administration for Children and Families.

Section 407(b)(3) of the Social Security Act provides for a TANF caseload reduction credit, which gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive the credit, a state must complete and submit a report that, among other things, describes the methodology and the supporting data that the state used to calculate its caseload reduction estimates. See 45 C.F.R. §261.41(b)(5). Prior to submitting the report, the state must provide the public with an opportunity to comment on the estimate and methodology. See id. §261.41(b)(6).

As the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. HHSC hereby notifies the public of the opportunity to submit comments.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website at https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/temporary-assistance-needy-families-tanf-statistics by December 1, 2017. The public comment period begins December 1, 2017, and ends December 15, 2017.

**Written Comments.** Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

**U.S. Mail**

Texas Health and Human Services Commission

Attention: Hilary Davis

P.O. Box 149030

MC 2115

Austin, Texas 78714-9030

**Overnight mail, special delivery mail, or hand delivery**

Texas Health and Human Services Commission

Attention: Hilary Davis

909 W. 45th Street

Bldg. 2, MC 2115

Austin, Texas 78751

Phone number for package delivery: (512) 206-5252

**Fax**

Attention: Policy Strategy, Analysis, and Development, Hilary Davis

Fax Number: (512) 206-5141

**Email**

Hilary.Davis@hhsc.state.tx.us

TRD-201704691
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: November 17, 2017

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## North Central Texas Council of Governments

### Request for Proposals for DART Red and Blue Line Corridors Last Mile Connections

The North Central Texas Council of Governments (NCTCOG) is requesting consultant services to develop engineering analyses, recommendations, and opinions of probable cost for bicycle and pedestrian improvements on prioritized routes leading to select Dallas Area Rapid Transit (DART) Red and Blue Line stations. The consultant will also provide recommendations and opinions of probable costs for possible improvements on the select DART station properties that will improve pedestrian and bicycle accessibility and circulation.

Proposals must be received no later than 5:00 p.m. Central Time, on Friday, January 5, 2018, to Kevin Kokes, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposal will be available at www.nctcog.org/rfp by the close of business on Friday, December 1, 2017.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201704675

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 16, 2017

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## Public Utility Commission of Texas

### Notice of Application to Amend a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on November 14, 2017, of an application to amend a water certificate of convenience and necessity in Henderson County.

Docket Style and Number: Application of Bethel-Ash Water Supply Corporation to Amend a Water Certificate of Convenience and Necessity in Henderson County, Docket Number 47776.

The Application: Bethel-Ash Water Supply Corporation filed an application to amend water certificate of convenience and necessity number 10821 in Henderson County.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47776.

TRD-201704599
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2017

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## Texas Department of Transportation

### Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

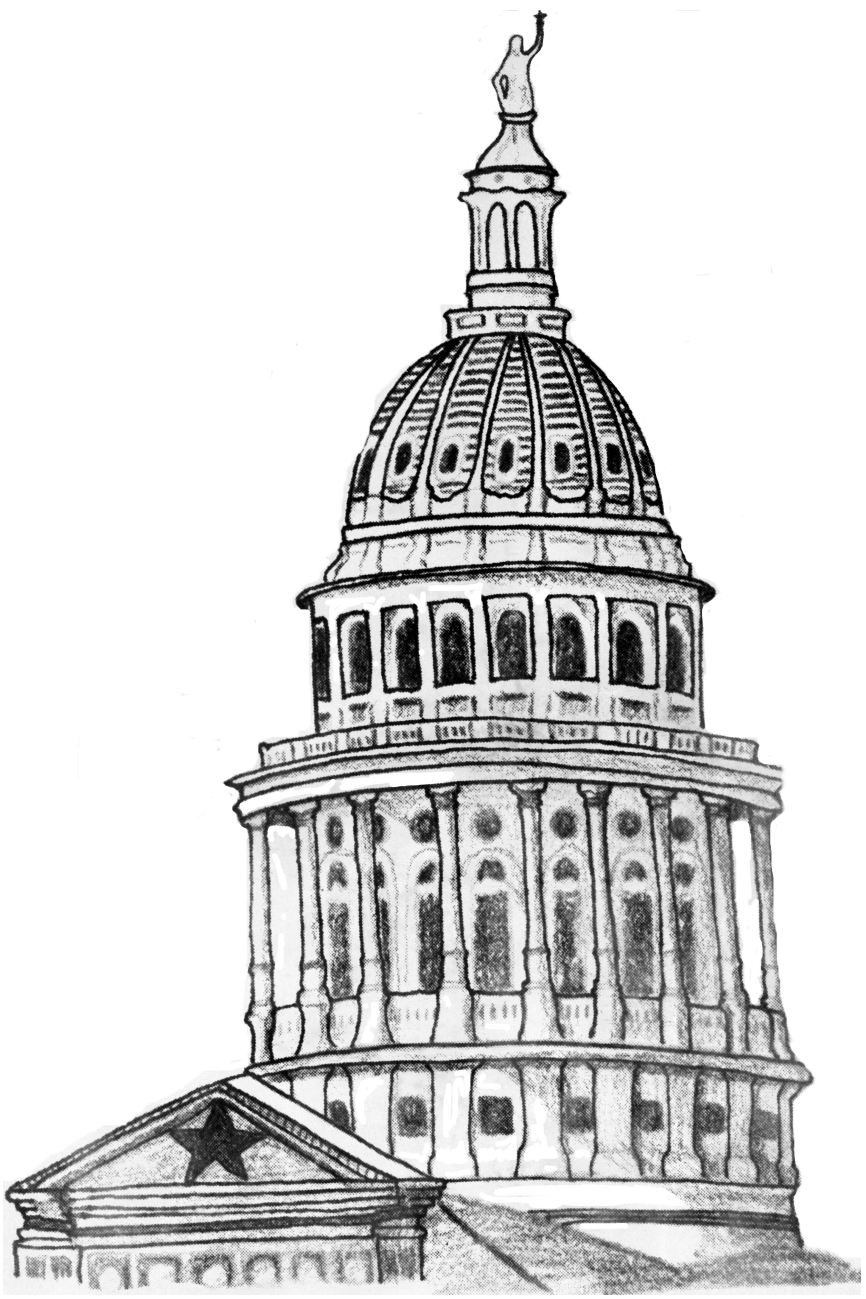
www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PILOT.

TRD-201704596
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 15, 2017

♦ ♦ ♦



## 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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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
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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