ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 26. TEXAS HOUSING TRUST FUND RULE

SUBCHAPTER B. AMY YOUNG BARRIER REMOVAL PROGRAM

10 TAC §§26.20 - 26.28

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program, §§26.20 - 26.28, without changes to the proposed text as published in the *Texas Register* (49 TexReg 2027). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect,

1. The repeal does not create or eliminate a government program, but relates to making changes to an existing activity;

2. The repeal does not require a change in the number of employees of the Department;

3. The repeal does not require additional future legislative appropriations;

4. The repeal does not result in an increase or a decrease in fees paid to the Department;

5. The repeal will repeal an existing regulation;

6. The repeal will not increase or decrease the number of individuals subject to the rule's applicability; and

7. The repeal will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed chapter would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed chapter.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 29, 2024, and May 2, 2024. No comment was received.

The Board adopted the final order adopting the repeal on June 13, 2024.

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

Except as described herein the adopted repealed chapter 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 June 14, 2024.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: March 29, 2024
For further information, please call: (512) 475-3959

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10 TAC §§26.20 - 26.28

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2027), new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, Subchapter B, Amy Young Barrier Removal Program, §§26.20 - 26.28. The rules will not be republished. The purpose of the new chapter is to implement a more germane rule and better align administration to state requirements.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to making changes to an existing activity;

2. The new rule does not require a change in the number of employees of the Department;

3. The new rule does not require additional future legislative appropriations;

4. The new rule does not result in an increase or a decrease in fees paid to the Department;

5. The new rule does not create a new regulation;

6. The new rule will not repeal an existing regulation;

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively or positively affect the state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this rule and determined that the new rule will not create an economic effect on small or micro-businesses or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the rule will be a more germane rule that better aligns administration to state requirements. There will not be any economic cost to any individuals required to comply with the new rule.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson has also determined that for each year of the first five years the new rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT AND STAFF REASONED RESPONSE. The Department accepted public comment between March 29, 2024, and May 2, 2024. The Department received comment from Phyllis McIntyre, a resident of Guadalupe County.

COMMENT SUMMARY: Commenter expressed concern about challenges to navigating the Department's website. Specifically noted was the Help for Texans website. Commenter suggested that residents have the ability to apply for funds directly to the Department as opposed to working through an Administrator.

STAFF RESPONSE: Staff appreciates the comment and recognizes the challenges associated with navigating the Department website. However, staff feels these challenges have been mitigated with the recent launch of a more streamlined, user-friendly Department website.

Staff acknowledges that the network of Administrators for the Amy Young Barrier Removal Program funds does not cover all areas of the state, and actively reaches out to units of local government when a constituent residing in an area that is not represented contacts TDHCA; however, the Department is not able to effectively administer program funds directly, and our planning documents require that funds are distributed through local Administrators that are able to provide oversight of the local program activities.

No changes are recommended in response to this comment.

The Board adopted the final order adopting the amendments on June 13, 2024.

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

Except as described herein the adopted new chapter 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 June 14, 2024.

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CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §§90.1 - 90.9

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, §§90.1 - 90.9, without changes to the text previously published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 941). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Wilkinson has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous readoption making changes to an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department. The same required fee amounts for a license are being retained in the new rule.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an to eliminate an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between February 23, 2024, and March 22, 2024. Comments regarding the proposed repeal were accepted in writing and by email. No comment on the repeal was received.

The Board adopted the final order adopting the repeal on February 6, 2024.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2024.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

10 TAC §§90.1 - 90.9

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 90, Migrant labor Housing Facilities §§90.1 - 90.9 with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 942). The rules will be republished. The purpose of the new rule is to provide compliance with Tex. Gov't Code §2306, Subchapter LL and to update the rule to: clarify staff roles, acceptable inspection standards, Department contact methods and website changes. This rule will also update the number of showerheads and lavatory sinks required to be provided, mandate the presence of a working carbon monoxide detector when a combustible fuel is in use, update laundry machine requirements, and require a separate bed to be provided for all workers or couples. The procedures for refunds, follow up inspections, and license and application validity are clarified. Inspections where access to the facility is not allowed will be considered failed. License posting requirements are updated to address housing in hotels, and complaint procedures have been updated to include additional protections for the complainant.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Wilkinson has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter LL.

1. The Department has evaluated this new rule and determined that none of the strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for Migrant Labor Housing Facilities. Other than in the case of a small or micro-business that is an applicant for a new or renewal license, no small or micro business are subject to the rule. It is estimated that approximately 700 small or micro-businesses are such applicants; for those entities the new rule provides for clear and more transparent process for applying for a license for Migrant Labor Housing Facilities and does not result in a negative impact for those small or micro businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to applicants seeking to license a Migrant Labor Housing Facility. The fee for applying for a license is either $75 or $250 depending on if the applicant is able to provide an inspection report that is less than 90 days old from an acceptable state or federal agency such as the Texas Workforce Commission (TWC) or not. The higher fee is required if the Department must send its own inspectors.

There are approximately 1,100 rural communities in Texas potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 90 does not implement financial burdens on rural communities, as the cost are associated with submitting an application for a license are completed entirely by private parties. The approximate number of applications for Migrant Labor Housing Facilities located in rural areas are about 80%.

3. The Department has determined that because there are facilities that are in rural areas, this rule will help ensure housing provided to Migrant workers will be safe and in good condition. Besides the collection of fees associated with submitting an application, there are probable positive economic effects on small or micro-businesses or rural communities that house Migrant workers, although the specific impact is not able to be quantified.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule only addresses the procedures for applicants applying for Migrant Labor Housing Facilities license; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule". Considering that the rule only provides procedures for an applicant to obtain a Migrant Labor Housing Facility license, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be codifying current policies and procedures to the Migrant Labor Housing Facility rule. There will not be any significant economic cost to any individuals required to comply with the new rule because the processes described by the rule have already been substantially in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between February 23, 2024, and March 22, 2024. Comments regarding the proposed rule were accepted in writing with comments received from:

1. Duncan McCook, Texas Cotton Ginners' Association

2. Dave Mauch, Attorney, Texas RioGrande Legal Aid, Inc.

3. Sidney Beaty, Research Analysis, Texas Housers

Rule Section §90.1

Comment Summary: No comments received.

Rule Section §90.2

Comment Summary: Commenter 3 supports the language to define couple.

Staff Response: Staff appreciates the support of commenter 3 on the language used in the rule.

Rule Section §90.3

Comment Summary: Commenters 2 and 3 support the requirement that the applicant must facilitate the inspection of the housing or have the inspection automatically fail.

Commenter 2 expressed concern on the increasing use of hotels and motels for long-term worker housing and the suitability of these facilities for this purpose based on the cooking and laundry facilities provided, available space to those housed, and prior absence of are require pre-occupancy inspection.

Staff Response: Staff appreciates the support of commenters 2 and 3. Concerning public accommodation use, the previous comment appears to have been written prior to Texas Workforce Commission (TWC) requiring employers to obtain a Department Migrant Labor Housing Facility (MLHF) license for all employers meeting the licensing requirement. This requirement to obtain the TDHCA MLHF license includes employers using public accommodation housing. Part of obtaining a MLHF license for public accommodation housing is first obtaining a passing pre-occupancy TDHCA inspection of the housing facility, which is beholden to the same standards as employer-owned housing. This has caused an increase in the number of public accommodations being inspected.

Concerning laundry facility access, as mentioned above, public accommodation housing that is subject to this rule has the same requirements as above, so these licensees are required to provide access to laundry facilities as specified in 10 TAC §90.4(10).

Concerning kitchen facilities, licensees are required to abide by the square footage requirements mentioned in 10 TAC §90.4(2). The Department is aware that public accommodations housing is often used without kitchen facilities that would meet the Occupation Health and Safety Administration (OSHA) standards cited in the Texas rule. The Department mirrors the TWC enforcement of the cited federal regulations in its enforcement of the Texas rule.

Concerning who is liable to obtain a license, the Department requires employers that "provide" Migrant Farmworker Housing to obtain the license for the housing of their employees. The comment mentions difficulty of determining the true owners of the housing in some instances due to a variety of arrangements of varying degrees of formality. This rule does not exclude any housing from these responsibilities due to the formality or lack thereof of how it was obtained, so the phrase "or obtain[ed] under other working arrangements," was added to address these situations.

Rule Section §90.4

Comment Summary: Commenter 2 was concerned about the misapplication of the Range Housing Standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304 with Department's addition of these acceptable federal standards for inspection.

Commenter 2 and 3 support the carbon monoxide detector being required in facilities that use gas or other combustible fuel. Commenter 3 further suggested this be applied to all housing facilities.

Commenter 1 requests clarification if the change to require individual beds be provided to each worker couple includes bedding. Commenters 2 and 3 supports the minimum bed requirement, but suggest a mattress and minimum size requirement for couples.

Commenters 2 and 3 request that the Department reinstate the previous TDHCA requirement of 4 burner stoves in all housing.

Staff Response: The Departments lists these as the acceptable standards for clarity, but omitted to specify that the Range Housing Standard, as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304, are only applicable when the Department accepts an inspection conducted by another state or federal agency such as TWC. When accepting these inspections the Department cannot dictate another agency's procedures, however when another agency's inspection is not used the Department will conduct its own inspection. All TDHCA inspection are based on the OSHA Employment, and Training Administration (ETA) standard, and TDHCA requirements. The proposed rule has been updated to clarify this.

The Department deems the addition of carbon monoxide detectors would unnecessarily reduce the supply of otherwise acceptable housing if imposed on facilities using only electric appliances.

Staff concurs the proposed wording of should be clarified and has updated the change to require a bed and clean mattress instead of the term "bedding." The minimum size for a bed shared by a couple was also added. The requirement to provide a four-burner stove, instead of other currently allowable alternatives, exceeds the federal minimum standards, and could be limiting for otherwise acceptable housing. Thus, the Department is not recommending further change based on this comment.

Rule Section §90.5

Comment Summary: Commenter 3 raises the question on the lower fee payment for applications that do not require a TDHCA inspection, and requests that the language allowing Department discretion in issuing a higher fee be removed.

Commenter 2 and 3 request that the Department codify what supplemental documentation would be requested in addition to an employer's self-certification of compliance with the requests of 10 TAC §90.4(c).

Commenter 2 supports the changes in §90.5(i and m).

Commenter 3 requests a stricter penalty schedule.

Staff Response: The Department does not agree that raising the application fees is appropriate at this time. The higher fee is charged since an on-site inspection will be conducted by the Department. The fees were originally lowered since the Department did not conduct an on-site inspection, and to incentivize

compliance with the licensing requirement. This is having the desired effect, and will need to continue for now.

The items listed on the attestation are the same as the Department requirements from 10 TAC §90.4(c). This attestation was originally required so that the Department would be able to accept other state and federal inspections. These items are checked for during TDHCA inspections. Requiring specific additional checklist items would prove to be difficult due to these requirements not applying to all types of housing and would prove to be an administrative burden to the Department at current staffing levels. Currently the Department requests additional documentation from employers based on risk of noncompliance and these requests are situation specific. The Department will add a penalty of perjury statement to the attestation form within 120 days.

Staff appreciates the support of commenter 2.

The penalty rate is specified in statute along with the procedures for enforcement, so at this time the Department cannot make any changes.

Rule Section §90.6

Comment Summary: Commenter 2 is concerned that the language allowing hotels to post the license and complaint line poster in the lobby may result in it being posted where workers will not see it.

Staff Response: The language of the change was updated to require that if this option is chosen the poster must be in a common area and easily visible.

Rule Section §90.7

Comment Summary: Commenters 2 and 3 supports the changes in §90.7(b) and (b)(4).

Staff Response: Staff appreciates the support of commenters 2 and 3.

Rule Section §90.8

Comment Summary: No comments received.

Rule Section §90.9

Comment Summary: No comments received.

STATUTORY AUTHORITY. The rules are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

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

§90.1. Purpose.

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921 - 2306.933). It is recognized that aligning state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U.S. Department of Labor's H2-A visa program, allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

§90.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921 - 2306.933, are capitalized. Other terms in 29 CFR §§500.130 - 500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--The state law that governs the operation and licensure of Migrant Labor Housing Facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.933.

(2) Board--The governing board of the Texas Department of Housing and Community Affairs.

(3) Business Day--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8:00 a.m. to 5:00 p.m., local time.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Director--The Executive Director of the Department or designated staff.

(7) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a Family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(8) Couple--A pair of individuals, whether legally related or not, that act as and hold themselves out to be a couple; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement.

(9) License--The document issued to a Licensee in accordance with the Act.

(10) Licensee--Any Person that holds a valid License issued in accordance with the Act.

(11) Occupant--Any Person, including a Worker, who uses a Migrant Labor Housing Facility for housing purposes.

(12) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained (or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers. The Provider is the operator under Tex. Gov't Code §2306.928.

(13) Worker--A Migrant Agricultural Worker, being an individual who is:

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.3. Applicability.

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by Providers must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

(b) Where agricultural employers own, lease, rent, otherwise contract for, or obtain under other working arrangements, Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 - 2306.922.

(c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(ies) at which the Migrant Labor Housing Facility is located, or the inspection will be considered failed.

(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.

(e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.

(f) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

§90.4. Standards and Inspections.

(a) Facilities must follow the appropriate housing standard as defined in 29 CFR §500.132, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards"), or if applicable the Range Housing standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304. The inspection checklists setting forth those standards are available on the Department's website at https://www.tdhca.texas.gov/migrant-labor-housing-facilities.

(b) Inspections of the Facilities of applicants for a License and Licensees may be conducted by the Department under the authority of Tex. Gov't Code §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies, on behalf of the Department, on forms promulgated by those agencies.

(c) In addition to the standards noted in subsection (a) of this section, all Facilities must comply with the following additional state standards:

(1) Facilities shall be constructed in a manner to insure the protection of Occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each Facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher. A working carbon monoxide detector must be present in all units that use gas or other combustible fuel.

(2) Combined cooking, eating, and sleeping arrangements must have at least 100 SF per person (aged 18 months and older); the portion of the Facility for sleeping areas must include at least a designated 50 square feet per person.

(3) Facilities for Families with children must have a separate room or partitioned area for adult Family members.

(4) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In Family housing units, separate sleeping accommodations shall be provided for each Family unit.

(5) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.

(6) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with any applicable local or state rules on food services sanitation.

(7) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck bunks shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

(8) Bathrooms, in aggregate shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.

(9) In all communal bathrooms separate shower stalls shall be provided.

(10) Mechanical clothes washers with dryers or clothes lines shall be provided in a ratio of one per 50 persons. In lieu of mechanical clothes washers, one laundry tray (which is a fixed tub (made of slate, earthenware, soapstone, enameled iron, stainless steel, heavy duty plastic, or porcelain) with running water and drainpipe for washing clothes and other household linens) or tub per 25 persons may be provided.

(11) All Facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

(12) A separate bed and clean mattress must be provided for each individual worker or Couple. If a single bed is provided to a couple, it may not be smaller than a full size.

§90.5. Licensing.

(a) Tex. Gov't Code §2306.922 requires the licensing of Migrant Labor Housing Facilities.

(b) Any Person who wants to apply for a License to operate a Facility may obtain the application form from the Department. The required form is available on the Department's website at https://www.tdhca.texas.gov/migrant-labor-housing-facilities.

(c) An application must be submitted to the Department prior to the intended operation of the Facility, but no more than 60 days prior to said operation. Applications submitted to the Department that are not complete, due to missing items and/or information, expire 90 days from Department receipt. In this circumstance, the fees paid are ineligible for a refund.

(d) The fee for a License is $250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to $75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee may apply.

(e) The License is valid for one year from the date of issuance unless sooner revoked or suspended. Receipt of a renewal application that is fully processed resulting in the issuance of a renewed license shall be considered as revoking the previous license, with the effective and expiration dates reflecting the renewal. All licenses have the same effective date as their issuance.

(f) Fees shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any License that has been issued in reliance upon such payment being made is null and void.

(g) A fee, when received in connection with an application is earned and is not subject to refund. At the sole discretion of the Department, refunds may be requested provided the fee payment or portion of a payment was not used toward the issuance of a License or conducting of an inspection.

(h) Upon receipt of a complete application and fee, the Department shall review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection of the Facility by an authorized representative of the Department. Inspections shall be conducted during Business Hours on weekdays that the Department is open, and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c), relating to Standards and Inspections, must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.

(i) The Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection. The Department, when it determines it is necessary based on risk, complaint, or information needed at time of application, may conduct follow-up inspections.

(1) If the Person performing the inspection finds that the Migrant Labor Housing Facility, based on the inspection, is in compliance with 10 TAC §90.4, relating to Standards and Inspections, and the Director finds that there is no other impediment to licensure, the License will be issued.

(2) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the License will be issued subject to such conditions as the Director may specify. The applicant may, in writing, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.

(3) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the Department, within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License may not be eligible for the reduced fee described in subsection (d) of this section and the balance of the $250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department of up to $200 per day of operation through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than $200.

(4) If the person performing the inspection finds that the Migrant Labor Housing Facility is in material noncompliance with §90.4 of this chapter (relating to Standards and Inspections), or that one or more imminent threats to health or safety are present, the Director may deny the application. In addition, the Department may also take action in accordance with §90.8, relating to Administrative Penalties and Sanctions.

(5) If access to all units subject to inspection is not provided or available at time of inspection, the inspection will automatically fail.

(j) If the Director determines that an application for a License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the License, and such order shall:

(1) Be clearly incorporated by reference on the face of the License;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a Migrant Labor Housing Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(k) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, P.O. Box 12489, Austin, Texas 78711-2489 or migrantlaborhousing@tdhca.texas.gov.

(l) The Department shall inform the applicant in writing of what is needed to complete the application and/or if a deviation found during the inspection requires a correction in order to qualify for issuance of a License.

(m) Any changes to an issued License (such as increasing occupancy and/or adding a building or unit) may be made at the sole determination of the Department, based on current rules and policy, within 30 days of the License issuance. Any changes requested more than 30 days after License issuance will require the submission of an

application for renewal, new inspection, and new fee payment, per the applicable rate.

(n) An applicant or Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a License or an election to appeal the imposing of conditions upon a License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

§90.6. Records.

(a) Each Licensee shall maintain and upon request make available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;

(2) A current list of the Occupants of the Facility and the date that the occupancy of each commenced;

(3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and

(4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence to or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least three years.

(c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

(1) A copy of the License;

(2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and

(3) A poster provided by the Department or the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this Facility or your unit, the Texas Department of Housing and Community Affairs (the Department) is the state agency that licenses and oversees this Facility. You may make a complaint to the Department by calling, toll-free, 1-833-522-7028, or by writing to Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, Texas 78711-3941. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any Facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalacion. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-833-522-7028 o escribiendo a Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, Texas 78711-3941. La oficina tiene personas que hablan español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación por el operador contra personas que se quejen contra ellos.

(4) For hotels, the License and poster described in paragraph (3) of this subsection may be posted in the lobby or front desk area only if this area is clearly visible, allows for easy reading of the aforementioned documents, and is readily accessible to the hotel guests and general public. If the hotel refuses to allow this posting, the License and poster described in this paragraph then must be posted in each room used to house the workers.

§90.7. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the Provider notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department as soon as possible but no later than 10 days after making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved.

(b) A Licensee, through its Provider, shall be provided a copy of the substance of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be 10 business days.

(1) Complaints may be made in writing or by telephone to 1-833-522-7028.

(2) Complaints may be made in English, Spanish, or other language.

(3) To the fullest extent permitted by applicable law, the identity of any complainant shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and Providers shall not engage in any retaliatory action against an Occupant for making a complaint in good faith. Any retaliatory action may be subject to administrative penalties and sanctions per §90.8 of this chapter (relating to Administrative Penalties and Sanctions).

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of Providers and Occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions, or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction assessed; and

(6) The date on which the order becomes effective if not appealed or otherwise resolved.

(i) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and not §1.2 of this title (relating to Department Complaint System to the Department).

§90.8. Administrative Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth in subsections (b) - (d) of this section. Nothing herein limits the right, as set forth in the Act, to seek injunctive and monetary relief through a court of competent jurisdiction.

(b) For each violation of the Act or rules a penalty of up to $200 per day per violation may be assessed.

(c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected License.

(d) Administrative penalties assessed regarding Migrant Labor Housing Facilities will be addressed exclusively under this section, and are not subject to 10 TAC Chapter 2, relating to Enforcement.

§90.9. Dispute Resolution, Appeals, and Hearings.

(a) A Licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a License or issuing a License subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a Licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the migrant labor housing facility affected is located, unless the Licensee agrees otherwise.

(c) A Licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).

(d) All administrative appeals are contested cases subject to, and to be handled in accordance with, Chapters 2306 and 2001, Tex. Gov't Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2024.

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Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

The Public Utility Commission of Texas (commission) adopts amendments to 25 sections in Chapter 27, Rules for Administrative Services, as part of the statutorily required four-year rule review under Texas Government Code §2001.039. The commission adopts §27.65, relating to Definitions, with changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2597) and will be republished. The commission adopts the following rules with no changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2596): §§27.21, relating to Commission Employee Training; 27.31, relating to Historically Underutilized Business Program; 27.69 relating to Sovereign Immunity; 27.81 relating to Notice of Claim of Breach of Contract; 27.83 relating to Agency Counterclaim; 27.85 relating to Request for Voluntary Disclosure of Additional Information; 27.87 relating to Duty to Negotiate; 27.89 relating to Timetable; 27.91, relating to Conduct of Negotiations; 27.93 relating to Settlement Approval Procedures; 27.97, relating to Costs of Negotiation; 27.99, relating to Request for Contested Case Hearing; 27.111, relating to Mediation Timetable; 27.113, relating to Conduct of Mediation; 27.115, relating to Agreement to Mediate; 27.117, relating to Qualifications and Immunity of Mediator; 27.121, relating to Costs of Mediation; 27.123, relating to Settlement Approval Procedures; 27.125, relating to Initial Settlement Agreement; 27.127; relating to Final Settlement Agreement; 27.143, relating to Factors Supporting the Use of Assisted Negotiation Processes; 27.145, relating to Use of Assisted Negotiation Processes; 27.161, relating to Procedures for Resolving Vendor Protests. These rules will not be republished.

The commission received no comments on the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §27.21

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

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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Adriana Gonzales
Rules Coordinator
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For further information, please call: (512) 936-7322

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SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

16 TAC §27.31

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

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SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

DIVISION 1. GENERAL

16 TAC §27.65, §27.69

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

The rules relating to Negotiation and Mediation of Certain Contract Disputes under Chapter 27, Subchapter C, are adopted under Texas Government Code Chapter 2260 and 2261, which relates to state agency contracting standards and oversight; Texas Government Code §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section which relates to the resolution of certain contract claims against the State of Texas; Civil Practices and Remedies Code Chapter 107 which governs resolutions granting permission to sue the State of Texas or a unit of state government; and Civil Practice and Remedies Code Chapter 154 which governs alternative dispute resolution procedures.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.65. Definitions.

The following words and terms, when used in this subchapter, have the following meaning, unless the context clearly indicates otherwise:

(1) Chief administrative officer--The executive director of the commission or their designee.

(2) Claim--A demand for damages by the contractor based upon the commission's alleged breach of the contract.

(3) Commission--The Public Utility Commission of Texas.

(4) Contract--A written contract between the commission and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for the commission; or

(B) to perform a project as defined by Texas Government Code, §2166.001.

(5) Contractor--Independent contractor who has entered into a contract directly with the commission. The term does not include:

(A) the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) an employee of the commission; or

(C) a student at an institution of higher education.

(6) Counterclaim--A demand by the commission based upon the contractor's claim.

(7) Day--Calendar days, not working days, unless otherwise specified by this chapter.

(8) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services include:

(i) the failure of the commission to timely pay for goods and services;

(ii) the failure of the commission to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the commission for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation, or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor; or

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the commission for work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract, other than by the terms provided for in the contract;

(vii) rejection by the commission, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor; or

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(C) The lists in subparagraphs (A) and (B) of this paragraph should not be considered exhaustive but are merely illustrative in nature.

(9) Mediation--A voluntary form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.

(10) Working day--A day on which the commission is open for the conduct of business.

(11) Goods--Supplies, materials or equipment.

(12) Parties--The contractor and the commission that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

(13) Project--As defined in Texas Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(14) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the commission.

(15) Unit of state government or unit--The state or an agency, department, commission (including the Public Utility Commission), bureau, board, office, council, court, or other state entity that is in any branch of state government that is created by the Texas Constitution, or statute of this state, including a university system or institution of higher education. The term does not include:

(A) a county;

(B) municipality;

(C) court of a county or municipality;

(D) special purpose district; or

(E) other political subdivision of the state.

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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DIVISION 2. NEGOTIATION OF CONTRACT DISPUTES

16 TAC §§27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.97, 27.99

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

The rules relating to Negotiation and Mediation of Certain Contract Disputes under Chapter 27, Subchapter C, are adopted

under Texas Government Code Chapter 2260 and 2261, which relates to state agency contracting standards and oversight; Texas Government Code §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section which relates to the resolution of certain contract claims against the State of Texas; Civil Practices and Remedies Code Chapter 107 which governs resolutions granting permission to sue the State of Texas or a unit of state government; and Civil Practice and Remedies Code Chapter 154 which governs alternative dispute resolution procedures.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

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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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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DIVISION 3. MEDIATION OF CONTRACT DISPUTES

16 TAC §§27.111, 27.113, 27.115, 27.117, 27.121, 27.123, 27.125, 27.127

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

The rules relating to Negotiation and Mediation of Certain Contract Disputes under Chapter 27, Subchapter C, are adopted under Texas Government Code Chapter 2260 and 2261, which relates to state agency contracting standards and oversight; Texas Government Code §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section which relates to the resolution of certain contract claims against the State of Texas; Civil Practices and Remedies Code Chapter 107 which governs resolutions granting permission to sue the State of Texas or a unit of state government; and Civil Practice and Remedies Code Chapter 154 which governs alternative dispute resolution procedures.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

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DIVISION 4. ASSISTED NEGOTIATION PROCESSES

16 TAC §27.143, §27.145

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

The rules relating to Negotiation and Mediation of Certain Contract Disputes under Chapter 27, Subchapter C, are adopted under Texas Government Code Chapter 2260 and 2261, which relates to state agency contracting standards and oversight; Texas Government Code §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section which relates to the resolution of certain contract claims against the State of Texas; Civil Practices and Remedies Code Chapter 107 which governs resolutions granting permission to sue the State of Texas or a unit of state government; and Civil Practice and Remedies Code Chapter 154 which governs alternative dispute resolution procedures.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

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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Adriana Gonzales
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SUBCHAPTER D. VENDOR PROTESTS

16 TAC §27.161

The amendments are adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001,14.002,14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

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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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.24

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.24, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1804). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department), and other laws applicable to the Commission and the Department. The Chapter 60 rules are the procedural rules of the Commission and the Department. These rules apply to all of the agency's programs and to all license applicants and licensees, except where there is a conflict with the statutes and rules of a specific program.

The adopted rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

As required by Texas Government Code, Chapter 2110, the Commission had previously established in the Chapter 60 rules the abolishment dates for all of the agency's advisory boards, except for any advisory board that was specifically exempted from Chapter 2110 by the statute that created the advisory board. The Chapter 60 rules contain two separate lists of advisory boards - those with an abolishment date and those that are statutorily exempt and do not have an abolishment date.

Since the Commission and the Department's advisory boards are no longer subject to Texas Government Code, Chapter 2110, the adopted rules remove the advisory board abolishment dates and the two separate lists of advisory boards from the Chapter 60 rules. The adopted rules are necessary to allow all of the agency's advisory boards to continue in existence unless and until there is a statutory change made to eliminate an advisory board's existence. The adopted rules will align the Chapter 60 rules with the statutory changes made by HB 3743, Section 4.

SECTION-BY-SECTION SUMMARY

Subchapter B. Powers and Responsibilities.

The adopted rules amend §60.24, Advisory Boards. The adopted rules repeal subsection (c), which lists the agency's advisory boards that were previously subject to abolishment and their designated abolishment dates. The adopted rules repeal subsection (d), which lists those advisory boards that are specifically exempt from Texas Government Code, Chapter 2110, as prescribed in the program statutes, and that do not have designated abolishment dates. The adopted rules also add new subsection (c), which states that Texas Government

Code, Chapter 2110 does not apply to the Commission and the Department's advisory boards.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1804). The public comment period closed on April 22, 2024. The Department received a comment from one interested party on the proposed rules in response to the required plain talk summary, which was posted and distributed on March 8, 2024, the same day that the proposed rules were filed with the *Texas Register,* but prior to the official publication of the proposed rules and the official start of the public comment period. The Department did not receive any comments from interested parties during the official public comment period. The early public comment is summarized below.

Early Comment: One interested party submitted a comment asking questions about the removal of the advisory boards.

Department Response: Texas Government Code, Chapter 2110 requires state agency advisory boards to have abolishment dates. Since the Commission and the Department's advisory boards are no longer subject to Chapter 2110, the proposed rules repeal the list of advisory boards and their abolishment dates from the Chapter 60 rules. The advisory boards themselves are not being repealed. All of the agency's advisory boards will continue in existence unless and until there is a statutory change made to eliminate an advisory board's existence. The Department did not make any changes to the proposed rules in response to this early public comment.

COMMISSION ACTION

At its meeting on May 21, 2024, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51. In addition, the following statutes for the programs that have advisory boards are affected by the adopted rules: Agriculture Code, Chapter 301 (Weather Modification and Control); Education Code, Chapters 29, 53, and 1001 (Driver and Traffic Safety Education); Government Code, Chapter 469 (Elimination of Architectural Barriers); Health and Safety Code, Chapters 754 (Elevators, Escalators, and Related Equipment) and 755 (Boilers); Occupations Code, Chapters 202 (Podiatrists); 203 (Midwives); 401 (Speech-Language Pathologists and Audiologists); 402 (Hearing Instrument Fitters and Dispensers); 403 (Dyslexia Practitioners and Therapists); 451 (Athletic Trainers); 455 (Massage Therapy); 506 (Behavioral Analysts); 605 (Orthotists and Prosthetists); 701 (Dietitians); 802 (Dog or Cat Breeders); 1151 (Property Tax Professionals); 1152 (Property Tax Consultants); 1302 (Air Conditioning and Refrigeration Contractors); 1305 (Electricians); 1603 (Barbers and Cosmetologists); 1802 (Auctioneers); 1901 (Water Well Drillers); 1902 (Water Well Pump Installers); 1952 (Code Enforcement Officers); 1953 (Sanitarians); 1958 (Mold Assessors and Remediators); 2052 (Combative Sports); 2303 (Vehicle Storage Facilities); 2308 (Vehicle Towing and Booting); 2309 (Used Automotive Parts Recyclers); and 2310 (Motor Fuel Metering and Quality); and Transportation Code, Chapters 551A (Off-Highway Vehicle Training and Safety); and 662 (Motorcycle Operator Training and Safety). No other statutes, articles, or codes are affected by the adopted rule.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

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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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 475-4879

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CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

16 TAC §120.65

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 120, §120.65, regarding the Dyslexia Therapy program, without changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1810). The rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 120 implement Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The adopted rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or

as authorized by the applicable program statute and established in rule.

The adopted rules remove language from Chapter 120, Licensed Dyslexia Therapists and Licensed Dyslexia Practitioners, that states that Texas Government Code, Chapter 2110 applies to the advisory committee established for that program. The adopted rules are necessary to remove conflicting language and to align the Dyslexia Therapy program rules with Texas Occupations Code, Chapter 51, as amended by HB 3743, Section 4.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §120.65, Dyslexia Therapists and Practitioners Advisory Committee; Membership. The adopted rules repeal subsection (b), which states that the advisory committee is subject to Government Code, Chapter 2110. The adopted rules re-letter the subsequent subsections and make a punctuation change in subsection (a).

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1810). The public comment period closed on April 22, 2024. The Department did not receive any comments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on May 21, 2024, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 403, Dyslexia Practitioners and Therapists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 403. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

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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General Counsel
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CHAPTER 121. BEHAVIOR ANALYST

SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

16 TAC §121.65

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, Subchapter C, §121.65, regarding the Behavior Analysts program, without changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1812). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 121, implement Texas Occupations Code, Chapter 506, Behavior Analysts, and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Texas Department of Licensing and Regulation (Department).

The adopted rules implement House Bill (HB) 3743, Section 4, 88th Legislature, Regular Session (2023), which exempts the Commission and the Department's advisory boards from Texas Government Code, Chapter 2110, State Agency Advisory Committees. HB 3743, Section 4 added new subsection (d) under Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member. This provision states: "(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department."

Texas Government Code, Chapter 2110 specifies certain requirements for a state agency advisory committee or board (advisory board), including the composition, duration, purpose, and tasks of the advisory board; the selection of the presiding officer; and the submission of specified reports. The requirements for the Commission and the Department's advisory boards, however, are specified and detailed in Texas Occupations Code, Chapter 51; in the applicable program statute and rules; and/or as authorized by the applicable program statute and established in rule.

The adopted rules remove language from Chapter 121, Behavior Analysts, that states that Texas Government Code, Chapter 2110 applies to the advisory board established for that program. The adopted rules are necessary to remove conflicting language and to align the Behavior Analysts program rules with Texas Occupations Code, Chapter 51, as amended by HB 3743, Section 4.

SECTION-BY-SECTION SUMMARY

Subchapter C. Behavior Analyst Advisory Board.

The adopted rules amend §121.65, Membership. The adopted rules repeal subsection (b), which states that the Behavior Analyst Advisory Board is subject to Government Code, Chapter 2110.

The adopted rules re-letter the subsequent subsections.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1812). The public comment period closed on April 22, 2024. The Department did not receive any comments from interested parties on the proposed rules.

COMMISSION ACTION

At its meeting on May 21, 2024, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 506, Behavior Analysts.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are adopted is House Bill 3743, Section 4, 88th Legislature, Regular Session (2023).

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 Licensing and Regulation
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 5. NONATTAINMENT REVIEW PERMITS

30 TAC §116.150

The Texas Commission on Environmental Quality (TCEQ) adopts the amendment to 30 Texas Administrative Code (TAC) §116.150. As adopted, this amended rule is submitted to the U.S. Environmental Protection Agency (EPA) as a state implementation plan (SIP) revision.

Amended §116.150 is adopted without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 381) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Federal Clean Air Act (FCAA), §§172(c)(5), 173, 182(a)(2)(C), 182(f) requires areas designated nonattainment for the ozone national ambient air quality standard (NAAQS) to include nonattainment new source review (NNSR) permitting requirements that require preconstruction permits for the construction and operation of new or modified major stationary sources (with respect to ozone) located in the nonattainment area. Emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_x) are precursor pollutants that in the presence of sunlight combine to form ozone. FCAA, §182(f) requires states to apply the same requirements to major stationary sources of NO_x as are applied for VOC; but further specifies that if the EPA administrator determines that "net air quality benefits are greater in the absence of reductions of oxides of nitrogen" the requirement for nonattainment plans to address NO_x emission reductions does not apply (a NO_x waiver).

A NO_x waiver was conditionally approved for the El Paso 1979 one-hour ozone nonattainment area, effective November 21, 1994 (59 *FedReg* 60714), conditioned on EPA approving the FCAA, §179B, demonstration that the El Paso one-hour ozone nonattainment area would attain the ozone NAAQS, but for international emissions from Mexico. Under Section 179B of the Act, EPA approved the 1979 one-hour ozone standard attainment demonstration SIP for El Paso County on June 10, 2004 (69 *FedReg* 32450). The NO_x waiver was codified in 30 TAC §116.150(e), which specifies NNSR requirements applicable in El Paso County.

The El Paso County area was originally designated as attainment for the 2015 eight-hour ozone NAAQS effective August 3, 2018, published June 4, 2018, 83 *FedReg* 25776. On November 30, 2021, 86 *FedReg* 67864, effective December 30, 2021, the El Paso County area was redesignated by EPA to nonattainment through a boundary change combining El Paso County with Dona Ana County, New Mexico and applying a retroactive attainment date of August 3, 2021, to the El Paso County area. In response to the nonattainment designation, TCEQ began SIP planning efforts to meet the FCAA obligations applicable for the El Paso County 2015 eight-hour ozone nonattainment area.

In response to the request for comment on the proposed El Paso County Emissions Inventory (EI) SIP Revision for the 2015 eight-hour ozone NAAQS, EPA noted that the NNSR requirement that is currently approved for the El Paso ozone nonattainment area did not include NNSR requirements for NO_x based on a NO_x waiver that was approved for the area under the revoked 1979 one-hour ozone standard. EPA also recommended that TCEQ revise the NNSR rule to include the requirements for NO_x.

In response, on November 28, 2022, TCEQ committed to initiate rulemaking for a proposal to amend 30 TAC §116.150(e) to clarify that the NO_x waiver for sources located in the El Paso ozone nonattainment area applies exclusively to the 1979 one-hour ozone standard and, therefore, does not apply to NNSR requirements for the 2015 eight-hour ozone standard. While in the process of SIP planning to comply with the nonattainment designation, TCEQ challenged the redesignation and the application of a retroactive attainment date. The D.C. Circuit Court of Appeals reversed EPA's redesignation in its opinion issued on June 30, 2023, in *Board of County Comm'n of Weld County v. EPA*, 72 F.4th 284 (D.C. Cir. 2023). The 2015 eight-hour ozone nonattainment designation is no longer effective in the El Paso County area; thus, NNSR is no longer required for the 2015 eight-hour

ozone standard. Although the 1979 one-hour ozone NAAQS has been revoked, states must continue to implement applicable requirements unless their removal is approved by EPA. Clarification of the applicability of the NO_x waiver will assure appropriate and effective implementation of the requirement.

Section by Section Discussion

This rulemaking adoption will amend the language in 30 TAC §116.150(e) to clarify that the currently effective NO_x exemption for the El Paso nonattainment area applies only for the 1979 one-hour ozone standard, in accordance with EPA's approval of the NO_x waiver.

Final Regulatory Impact Determination

TCEQ reviewed the rulemaking adoption considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking adoption does not meet the definition of a "Major environmental rule" as defined in that statute and, in addition, if it did meet the definition, will not be subject to the requirement to prepare a regulatory impact analysis. 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 rulemaking adoption does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule," which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., § 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 rulemaking adoption's purpose is to amend 30 TAC §116.150(e) to clarify that the NO_x waiver for sources located in the El Paso ozone nonattainment area applies exclusively to the 1979 one-hour ozone standard and, therefore, does not apply to NNSR requirements for the 2015 eight-hour ozone standard. As discussed elsewhere in this preamble, the currently effective rule provision that allows major sources of NO_x to avoid NNSR permitting is not specific regarding its applicability for a particular ozone NAAQS. This rule adoption will appropriately clarify the applicability of the NO_x waiver to the 1979 one-hour ozone NAAQS only. Although the 1979 one-hour ozone NAAQS has been revoked by EPA, states must continue to implement applicable requirements unless their removal is approved by EPA. Clarification of the applicability of the NO_x waiver will assure appropriate and effective implementation of the requirement. New Source Review (NSR) preconstruction permitting programs are mandated by 42 United States Code (USC), §7410, FCAA, §110. States are required to either accept delegation of the federal NSR program or create, submit, and implement a program as part of their EPA-approved SIP, required by the FCAA, §110 to attain and maintain the NAAQS. All NSR permits must also be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. Texas has an EPA-approved NSR preconstruction program, so the adopted revisions to 30 TAC Chapter 116 will be submitted to EPA as revisions to the Texas SIP, as discussed elsewhere in this preamble.

The rulemaking adoption implements requirements of the FCAA, 42 USC §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The FCAA does specifically require NSR preconstruction permitting programs for both major and minor stationary sources. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS; and for required programs, states must create and implement programs that meet both the statutory and regulatory requirements for those programs. In developing the required or necessary programs, states, affected industry, and the public collaborate on the best methods for meeting the requirements of the FCAA and attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC §7410.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179 as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are also required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as "Major environmental rules" that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, TCEQ provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due

to its limited application." TCEQ also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a "Major environmental rule" that exceeds a federal law.

Because of the ongoing need to meet federal requirements, TCEQ routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by TCEQ to meet a federal requirement was considered to be a "Major environmental rule" that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by TCEQ in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only require the full RIA for rules that are extraordinary in nature. While the rule adoption may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the adopted rules do not impose burdens greater than required to comply with the FCAA requirement for states to create and implement NSR preconstruction permitting programs, as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. TCEQ has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co*., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co*., 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) TCEQ's interpretation of the RIA 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" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, TCEQ has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to be necessary to fulfill the state's obligation to create and implement an NSR preconstruction permitting program, and all NSR permits are required to be included in federal operating permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the adopted rules, if adopted by TCEQ and approved by EPA, will become federal law as part of the approved SIP required by 42 USC §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore, this rulemaking adoption action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. The commission offered a public hearing on February 27, 2024. The comment period closed on February 27, 2024. No oral or written comments on the proposed rule were received.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means 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 §17 or §19, Article I, Texas Constitution; or 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 percent 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.

TCEQ completed a takings impact analysis for the rulemaking adoption action under the Texas Government Code, Chapter 2007. The primary purpose of this rulemaking adoption action, as discussed elsewhere in this preamble, is to amend 30 TAC §116.150(e) to clarify that the NO_x waiver for sources located in the El Paso ozone nonattainment area applies exclusively to the 1979 one-hour ozone standard and, therefore, does not apply to NNSR requirements for the 2015 eight-hour ozone standard. As discussed elsewhere in this preamble, the currently effective rule provision that allows major sources of NO_x to avoid NNSR permitting is not specific regarding its applicability for a particular ozone NAAQS. This adopted rule will appropriately clarify the applicability of the NO_x waiver to the 1979 one-hour ozone NAAQS only. Although the 1979 one-hour ozone NAAQS has been revoked by EPA, states must continue to implement applicable requirements unless their removal is approved by EPA. Clarification of the applicability of the NO_x waiver will assure appropriate and effective implementation of the requirement. NSR preconstruction permitting programs are mandated by 42 USC, §7410, FCAA, §110. States are required to either accept delegation of the federal NSR program or create, submit, and implement a program as part of their EPA-approved SIP, required by the FCAA, §110 to attain and maintain the NAAQS. The adopted

rule changes will continue to fulfill this requirement. Also, since NSR preconstruction permitting is an applicable requirement of the FCAA, all NSR permits are required to be included in operating permits by 42 USC, §7661a, FCAA, §502. Texas has an EPA-approved NSR preconstruction program, so the adopted revisions to 30 TAC Chapter 116 will be submitted to EPA as revisions to the Texas SIP, as discussed elsewhere in this preamble.

Therefore, Chapter 2007 does not apply to this rulemaking adoption because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Texas Government Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the rulemaking adoption implements requirements of the FCAA, §42 USC §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state, as well as requires certain specific programs, such as NSR preconstruction permitting. While 42 USC §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The FCAA does specifically require NSR preconstruction permitting programs for both major and minor stationary sources. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS, and for required programs, states must create and implement programs that meet both the statutory and regulatory requirements for those programs. In developing the required or necessary programs, states, affected industry, and the public collaborate on the best methods for meeting the requirements of the FCAA and attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC §7410.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179 as well as the imposition of a FIP under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the NAAQS, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The adopted rules will not create any additional burden on private real property beyond what is required under federal law, as the adopted rules, if adopted by TCEQ and approved by EPA, will become federal law as part of the approved SIP required by 42 USC §7410, FCAA, §110. The adopted rules will not affect private real property in a manner that will require compensation to private real property owners under the United States Constitution or the Texas Constitution. The rulemaking adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the rulemaking adoption will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this rulemaking adoption.

Consistency with the Coastal Management Program

TCEQ reviewed the rulemaking adoption and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program (CMP) and, therefore, must be consistent with all applicable CMP goals and policies.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission offered a public hearing on February 27, 2024. The comment period closed on February 27, 2024. No oral or written comments on the proposed rule were received.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 116 is an applicable requirement under the 30 TAC Chapter 122, Federal Operating Permits Program. Although the rulemaking adoption will amend the language in 30 TAC §116.150(e), the amended language will clarify the waiver applicability to the NO_x standards for the El Paso nonattainment area for the 1979 one-hour ozone standard; therefore, it is not anticipated to have an adverse effect on sites subject to NNSR requirements.

Public Comment

The commission offered a public hearing on February 27, 2024. The comment period closed on February 27, 2024. No oral or written comments on the proposed rule were received.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, which provides authority to perform any acts necessary and convenient to exercising its jurisdiction; TWC §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its power and duties; TWC, §5.105, concerning General Policy, which requires the commission to adopt all general policy by rule; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under 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 the 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, §382.015, concerning the Power to Enter Property, which authorizes a member, employee, or agent of the commission to enter public or private property to inspect and investigate conditions relating to emissions of air contaminants; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; THSC, §382.022, concerning Investigations, which authorizes the executive director authority to make or require investigations; THSC, §382.051, concerning Permitting Authority of the Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the Texas Clean Air Act; THSC, §382.0512 concerning Modification of Existing Facility; authorizing the commission to consider certain effects on modifications of permits; THSC,§382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with the Texas Clean Air Act; THSC, §382.0514, concerning Sampling, Monitoring, and Certification, which authorizes the commission to require sampling, monitoring, and certification requirements as permit conditions; THSC, §382.0515, Application for Permit, which authorizes the commission to require certain information in a permit application; and THSC, §382.0518, Preconstruction Permit, allowing the commission to require a permit prior to construction of a facility.

The adopted amendments implement TWC, §§5.102, 5.103, 5.105, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.015, 382.016, 382.017, 382.022, 382.051, 382.0512, 382.0513, 382.0514, 382.0515, and 382.0518.

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 June 14, 2024.

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.81, 65.82, 65.85, 65.88

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 23, 2024 adopted amendments to 31 TAC §§65.81, 65.82, 65.85, and 65.88, concerning Disease Detection and Response. The amendments to §65.82 and §65.88 are adopted with changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2395). The amendments to §65.81 and §65.85 are adopted without change and will not be republished.

The change to §65.82 restores language inadvertently indicated for removal in order to preserve the grammatical consistency of the statement of the section's applicability and alters language in the roadway description in paragraph (1)(B) to eliminate confusing references to roadway intersections in the boundary description. The change is nonsubstantive.

The change to §65.88, concerning Deer Carcass Movement Restrictions, adds the article "a" to subsection (c)(6)(B) for purposes of making the provision grammatically correct. The change is nonsubstantive. The change also retains the provisions of former subsection (b)(1)-(7), which were inadvertently indicated for removal. The provisions provide exceptions to the prohibition of the transport and possession of parts of susceptible species brought into Texas from places where CWD has been detected in free-ranging of captive herds.

The amendments function collectively to refine surveillance efforts as part of the agency's effort to manage chronic wasting disease (CWD).

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

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the State of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

The commission has directed staff to investigate methods to reduce the geographical extent of management zones and reduce the inconvenience and confusion created for hunters and landowners. Once CWD is found in a free-ranging deer, disease management becomes much more difficult compared to the discovery of CWD positive animals in deer breeding facilities (because the deer are being held in captivity). This means that CWD zones for infected free-ranging populations are likely to remain and grow over time. To alleviate this issue, staff has developed a periodic, voluntary sampling approach which, in concert with the statewide carcass processing and disposal requirements described in the amendment to §65.88, concerning Deer Carcass Movement and Disposal Restrictions, is intended to allow the department to discharge its statutory duty to conserve and protect deer resources while reducing the regulatory footprint associated with the current rule framework. Under this periodic, voluntary sampling approach, a CZ and/or SZ established in response to a CWD detection would result in an initial period during which testing of all hunter-harvested deer (at department expense) would be mandatory, followed by a specified time period (e.g. three years) of voluntary sampling of hunter-harvested deer, followed by a year of mandatory testing, and repeating the cycle of voluntary and mandatory sampling. If no additional positive deer are discovered, this pattern would be repeated until the surveillance metrics provide a reasonable assurance that CWD is not present on the landscape; however, subsequent detections in areas around a CZ may necessitate resumption of mandatory testing to better characterize the distribution and prevalence in this newly affected area.

The amendment to §65.81, concerning Containment Zones; Restrictions, expands the geographical extent of CZ 2 in the Panhandle in response to additional detections of CWD in free-range mule deer. The amendment also removes mandatory check station requirements in CZs 1 (Hudspeth and Culberson counties), 2 (Deaf Smith, Oldham, and Hartley counties), 3 (Medina and Uvalde counties), 4 (Val Verde County), 5 (Lubbock County), and 6 (Kimble County) and implements voluntary check station measures beginning September 1, 2024. The department has determined that adequate disease surveillance in those zones has been achieved, that the extent or prevalence of CWD is known, and that voluntary surveillance measure can be implemented on an alternating basis with mandatory surveillance measures in those zones.

Similarly, the amendment to §65.82, concerning Surveillance Zones; Restrictions, replaces mandatory check station requirements with voluntary measures in SZ (Surveillance Zone) 1 (Culberson and Hudspeth counties), 3 (Medina and Uvalde counties), 4 (Val Verde County), 5 (Kimble County), and 6 (Garza, Lynn, Lubbock, and Crosby counties). The commission has directed staff to investigate new approaches to the process for the delineation of SZ parameters. Under current methodology, when CWD is detected in a deer breeding facility, a SZ is created, consisting of the area within a distance of two miles from the external perimeter of the property where the breeding facility was located (including all properties wholly or partially within those boundaries). Because properties where breeding facilities are located can be irregularly shaped and vary widely in size, surveillance zone boundaries therefore vary in shape and geographical extent accordingly. The amendments modify current SZs to reflect a two-mile radius around a deer breeding facility (the physical facility, not the boundaries of the property where the facility is located) where CWD is detected (i.e., a zone boundary can bisect a property, which wasn't the case prior to his rulemaking). The department believes that although this approach would reduce the efficacy of SZs to provide a high degree of surveillance, it should reduce confusion for hunters and landowners while providing some ability for the detection of CWD if it were present or should it have spread from the positive facilities to the surrounding landscape.

The amendment also eliminates SZ 10 and SZ 11 in Uvalde County and SZ 12 in Limestone County. The department has determined that the risk mitigation strategies implemented in the CWD-positive deer breeding facilities that precipitated those zones designations have significantly reduced the risk that CWD was or will be spread to nearby populations. The affected deer breeders accepted herd plan agreements with the department, TAHC, and the United States Department of Agriculture (USDA) and were able to mitigate disease transmission via depopulation, enhanced disease surveillance, targeted culling of exposed animals, and cleaning and disinfection, among other methods. In the CZs caused by CWD detections in deer breeding facilities and the permittees have not instituted such measures, it is not possible to eliminate SZ designations.

The amendment to §65.85, concerning Mandatory Check Stations, provides for the establishment of voluntary check stations and procedures within CWD management zones. As discussed earlier in this preamble, this rulemaking implements voluntary procedures for testing hunter-harvested deer in certain zones (provided certain criteria are satisfied). The amendment also retitles the section accordingly.

The amendment to §65.88, concerning Deer Carcass Movement Restrictions, creates additional options governing the post-harvest transportation of deer and establishes statewide carcass disposal standards. Because CWD prions (the infectious agents that causes CWD) are transmissible via the tissues of infected animals, especially brain, spinal cord, and viscera, the department believes that care should be taken with respect to the treatment of carcasses, especially carcasses of animals taken within any CWD management zone. Under current rule, a deer taken

in a CWD management zone cannot be transported from the zone unless it has been processed as required by the section and transported to a final destination (the possessor's permanent residence or cold storage/processing facility) or taxidermist, unless it has first been presented at a department check station for tissue sample removal, which allows the department to conduct disease surveillance and provides a method for notifying hunters in the event that a hunter-harvested animal has tested positive for CWD. The department has determined that the current rules can be modified to allow the carcass of a harvested deer to be deboned at the location where harvest occurred (which is currently unlawful unless exempt as authorized under the provisions of §65.10, concerning Possession of Wildlife Resources), provided the meat is not processed beyond the removal of whole muscles from the bone, the meat is packaged in such a fashion that meat from multiple deer is not commingled, proof-of-sex and any required tag accompanies the meat to a final destination, and the remainder of the carcass remains at the harvest location.

The amendment also imposes statewide carcass disposal measures that apply only to carcasses transported from the location of harvest elsewhere (i.e., not separated into quarters or deboned at the harvest location prior to transport), which requires all deer parts not retained for cooking, storage, or taxidermy purposes to be disposed of (directly or indirectly) at a landfill permitted by the Texas Commission on Environmental Quality to receive such wastes, interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material, or by being returned to the property where the animal was harvested. The department has determined that in light of the recent spate of CWD detections in free-ranging deer and in deer breeding facilities (which are extensively epidemiologically interconnected and the source of deer released at hundreds of locations across the state), a statewide carcass disposal rule will be beneficial by limiting and ideally eliminating the careless, haphazard, or inadequate disposal of potentially infectious tissues, thus mitigating the potential spread of CWD.

The department received 37 comments opposing adoption of the proposed rules. Of those comments, 22 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

A number of comments (7) addressed topics that are not germane to the subject of this rulemaking, such as existing rules prescribing disease management standards and protocols *within* deer breeding facilities. This rulemaking addresses CWD management actions with respect to free-ranging populations and hunter-harvested animals, and only tangentially implicates deer breeders and deer breeding (because the affected sections also contain standards for transportation of live deer under department permits within and/or beyond CWD management zones, which includes transfers of deer by deer breeders), none of which are affected by this rulemaking. Thus, existing regulations concerning disease management *within* deer breeding facilities are *per se* beyond the scope of this rulemaking and comments regarding those rules are therefore not germane.

One commenter opposed adoption, described the department as being analogous to a troupe of traditional circus entertainers known for wigs, large shoes, and extensive facial paint, and provided a protracted statement repeating various definitively debunked claims regarding the existence, pathogenicity, lethality, and harmful potential of CWD, finally alleging that the department's actual intent is not to protect the state's deer but to destroy deer breeders and deer breeding in the state. The department disagrees with the comment and responds that although it is only tangentially related to the subject of the rulemaking (since deer breeders are minimally affected by CWD management zones, both numerically and operationally), the department reiterates once again the following undisputable facts: CWD is a real disease, it is always fatal to certain species of cervids, it has been spreading in Texas for over a decade, and it has been conclusively proven to have killed hundreds of deer in this state, the overwhelming majority of which were in deer breeding facilities. The department further responds that its sole objective with respect to CWD management is the protection of free-ranging *and captive* populations of a public resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the carcass movement provisions as proposed were not stringent enough. The department disagrees with the comment and responds that the task facing the department with respect to CWD management in free-ranging settings is the need to balance effective measures to retard and if possible stop the spread of CWD against the impacts of those measures to hunters and landowners. The movement of live deer by human agency is known to present the greatest risk for transmitting CWD, is known to have exposed and infected several deer breeding facilities across Texas and, in terms of free-ranging deer, facilitated more localized transmission. The likelihood of transmission by means of the carcasses of free-ranging deer is believed to be comparatively small (although not zero), particularly in locations that are not near known CWD outbreaks. Thus, the department is confident that the rules as adopted do not present an unacceptable risk of the spread of CWD via the carcasses or remains of hunter-harvested deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD zones "have had little to no effect on the spread of CWD" because the number of cases continues to rise and the state "needs a comprehensive strategy with regards to CWD, not "band-aid" solutions to stop a ruptured artery." The commenter stated that CWD "has shown up in wild populations segregated from deer breeding facilities/operations" and "[G]enetically superior (CWD resistant) deer studies need to be reviewed with an open and objective evaluation." The department disagrees with the comment and responds, first, that CWD management zones are not in and of themselves capable of stopping the spread of CWD - they are simply areas surrounding the locations of known infections, within which heightened surveillance measures are employed to determine the prevalence and extent of disease progression. The department also disagrees that its CWD management strategies are analogous to the employment of superficial measures to address acute trauma, noting once again that disease management realities with respect to free-ranging populations are distinctly different and separate from those of captive populations and it is pointless to compare the two. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is absurd for the state to impose carcass movement and disposal restrictions for areas of the state where CWD has not been discovered, but continues to "allow unchecked live transport of captive deer which is the primary vector of introduction of CWD into new areas of the state." The commenter stated that the transport of live cervids should be prohibited and that "reducing surveillance and containment zones is not going to improve how

we monitor the spread of CWD between animals in free-ranging populations." The department disagrees with the comment and responds that carcass and disposal regulations are a prudent response to the reasonable probability that CWD exists undiscovered somewhere in the state and function not only to retard the spread of CWD from places where it exists but has not yet been detected, but to create good habits for hunters and landowners moving forward. The department also responds that the transport of live deer is not "unchecked," because deer in Texas can be transported live only by deer breeders permitted by the department and then only in compliance with disease surveillance measures. The department agrees that reducing the geographical extent of CWD management zones, from a purely epidemiological perspective, necessarily reduces the confidence that surveillance will quickly detect CWD if it is present, but the department believes that the rules as adopted provide sufficient confidence that the essential function of CWD management zones is not compromised. No changes were made as a result of the comment.

One commenter opposed adoption and stated, ", _voluntary_ does not work!". The department agrees with the comment and responds that a system of alternating periods of voluntary testing and mandatory testing should provide reasonable confidence that adequate surveillance is occurring. No changes were made as a result of the comment.

One commenter opposed adoption and stated specific disagreement with "[n]ot being able to place more than one animal's quarters in a single container (cooler). That is not feasible for most folks, and is not practical." The department disagrees with the comment and responds that the rules as adopted do not establish a ratio of harvested deer per container, but do require meat from individual animals to be kept separate. Thus, a cooler may contain meat from any number of deer, but the meat from each deer must in a separate package, which is necessary for department enforcement personnel (and landowners) to verify compliance with bag limits. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should be republished with maps depicting the CZs and SZs instead of latitude/longitude coordinate pairs. The department disagrees with the comment and responds that latitude/longitude descriptions of CWD management zones are the legal definition of the areas to which certain department regulations apply and are necessary for enforcement purposes, but maps of management zones are readily and easily accessible on the department website and by downloading the My Texas Hunt Harvest software application to a smartphone or tablet. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "[Z]ones are not needed to govern the movement or testing of deer. They are punitive and harmful to landowners, land values, hunters, and hunting opportunity. Zones harm the relationship between landowners and the department." The department disagrees with the comment and responds that CWD management zones are the easiest and simplest method for the department to quickly determine the prevalence and spread of the disease in an area when it is detected, and to keep the public informed about where the disease has been detected. The department disagrees that the characterization of CWD zones as punitive is accurate, as they are not intended to penalize undesirable behavior or conduct. Further, despite numerous claims of harm to landowners, land values, hunters, and hunting opportunity, the department is not aware of any factual evidence to support such accusations and responds that the true threat to land values and hunting in Texas is posed by CWD and its spread, not department efforts to contain it and educate the public to protect a publicly owned resource. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed carcass movement and disposal standards, stating that there is confusion "[b]etween hunters and landowners on what this carcass disposal restriction package includes, potentially threatening hunter attitudes and challenging compliance." The commenter went on to state that there has been very little information shared about how these carcass disposal rules would be communicated to the hunting public and that education and voluntary cooperation should always be prioritized as an alternative to new regulations. The commenter continued, stating that the department should create "a set of Best Management Practices, paired with an education campaign detailing how proper movement and disposal actions suppress disease spread in Texas," to achieve "intended goals without the burden of regulation." The department disagrees with the comment and responds that the rules as adopted are not a burden and shouldn't confuse anyone because they actually represent liberalization and simplification of existing standards governing the post-harvest possession of deer, making it easier for hunters to comply with the law and more rather than less likely to encounter difficulties. The department further responds that with over a century of experience conserving and managing the wildlife resources of Texas on behalf of and for the enjoyment of the people of the state and in communicating regulations to that public, it more than understands the value of communication with the public it serves and will engage in pronounced efforts to inform and educate the public about the carcass movement and disposal restrictions, including via social media and specialized web pages and applications in addition to traditional education and outreach avenues. Finally, the department notes that fortunately or unfortunately, enforceable rules are necessary to deal with the very small portion of the population who consciously choose to be unscrupulous. No changes were made as a result of the comment.

One commenter stated that a line on a piece of paper doesn't contain anything, that CWD zones should be eliminated, that the entire state should be an SZ, that a high fence at the commenter's deer breeding facility protects all deer in the state of Texas, that the department admits that even in the areas of the state with the highest prevalence of CWD there is no need for testing, research, or new data because the deer breeders do it for the department by testing 100 percent of mortalities, that CWD has always been in Texas, and that "if you test enough, you will find it." The commenter also stated that "if someone wants to have a deer tested, that should be their choice, rather than forcing them to do so when there is no evidence that any harm would come to anyone who would come into contact with CWD," and further stated "the fear-mongering must stop." The department disagrees with the comment and responds that the term "containment zone" refers to a department-defined geographic area in this state within which CWD has been detected or the department has determined, using the best available science and data, that CWD detection is probable" and is not intended to act as an actual physical barrier to the transmission of CWD. A CZ is simply an area calculated by scientific method to be appropriate for the implementation of heightened surveillance measures in order to quickly determine the prevalence and distribution of the

disease. The department further disagrees that a high fence at a single location serves as any appreciable kind of protection from CWD for deer populations anywhere, let alone a state the size of Texas, and observes that if this indeed were the case, the documented spread of CWD from multiple deer breeding facilities would not have occurred and more than 20 years of department efforts to combat the disease would not have been necessary. The department also responds yet again that captive populations present intrinsically and systematically different realities with respect to disease management in comparison to free ranging populations and the two cannot and should not be epidemiologically equated. In any case, the rules do not contemplate disease management standards *within* deer breeding facilities; thus, the portion of the comment related to deer breeding is therefore not germane. The department also disagrees that the entire state should be a surveillance zone, as there is no logical reason to direct finite and limited resources to heightened surveillance in places where there is no immediate, physical evidence to suspect the presence of CWD. The department also responds once again that whether or not CWD has always been present in Texas is irrelevant; it is here now and it is spreading. The department also responds once more, with regards to the oft-repeated logical fallacy that looking for something diligently enough will always result in finding it, that the presence or absence of CWD is not a function of the intensity of surveillance; CWD is either present or it is not, *independent* of surveillance effort. To maintain otherwise is to create the logical proposition that if surveillance efforts were not conducted at all, CWD would cease to exist, which is demonstrably not true. The department is charged with protecting and conserving a public resource, in this case deer in captive and free-ranging populations; thus, since CWD is a proven threat to that resource, the department must do its best to stop it from spreading by heightening surveillance at locations where it has been detected, which is completely appropriate. Finally, the department responds that although there is no evidence at the current time of zoonotic transmission of CWD to humans, the present and most pressing threat is to deer, the communication of the presence and seriousness of that threat is not "fear-mongering" but rather, an appropriate and responsible notification to the public that the department serves. The department further responds that the height of irresponsibility would be for the department to have knowledge as to where CWD exists and fail to inform landowners, hunters, and the public in general about the discovery. No changes were made as a result of the comment.

Three commenters opposed adoption and stated in various ways that the department was employing a double standard in that some CWD management zones are being transitioned from mandatory to voluntary testing of hunter-harvested deer because by the department's own admission "they know CWD is there," yet the department does not apply that standard to positive deer breeding facilities." The department disagrees with the comments and responds that the commenters appear to be confusing or conflating several different disease-management scenarios. The commenter is attempting to equate two discrete, non-comparable disease management scenarios, which the department has repeatedly emphasized is a scientifically flawed practice. As noted repeatedly in this and many other rulemakings, the epidemiological realities of captive versus free-ranging populations are not comparable, and this is especially important to understand in the context of deer breeding operations, most if not all of which receive and translocate deer over distances much greater than those travelled by free-ranging deer in their natural ranges. In those zones where the department is confident that the disease risk is acceptable (zones in which long-term surveillance has produced statistical confidence that prevalence and distribution are zero, as well as zones in which surveillance, in addition to prompt and effective mitigation efforts at an index facility (if the cause of the zone was detection in a deer breeding facility) yield confidence that CWD is not on the landscape), the department believes the testing of hunter-harvested deer can be allowed on a voluntary basis, particularly in light of the carcass movement and disposal measures also adopted as part of this rulemaking. Testing within deer breeding facilities, however, must be mandatory under all circumstances. A typical deer breeding operation can receive up to hundreds of deer from other deer breeders, commingle them, and then ship hundreds of commingled deer to other deer breeders or release sites. Thus, when CWD is detected in a deer breeding facility, or a deer breeding facility becomes epidemiologically linked to a positive facility, there is a greatly magnified risk for it to be spread much farther and to more locations as compared to free-ranging deer limited by natural movement within a home range. A deer breeding facility where CWD has been detected is a disease risk forever. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD zones are unnecessary because deer breeding facilities are automatically prohibited from transferring deer when a positive is detected and heavily monitored under a herd plan. The commenter stated that the department creates CWD zones "for appearance's sake" instead of finding solutions, that CWD management zones "play on a placebo effect" because they seem like a solution but really aren't and negatively affect land values and hunting. The department disagrees with the comment and responds that while it is true that the first order of epidemiological business when CWD is discovered in a deer breeding facility is to place the facility in quarantine, the next is to begin heightened surveillance in the area surrounding the breeding facility in order to ascertain if CWD has escaped or is otherwise present in surrounding free-ranging deer populations, and if so, to what effect. This is because fences are not absolutely effective barriers against disease transmission, CWD in particular, which is known to be spread via environmental contamination as well as by physical contact through fences. The department also responds that disease monitoring under a herd plan is only slightly more intensive than that required under department rules, and CWD has been detected in breeding facilities with herd plans. In any case, monitoring *within* breeding facilities is not the subject of the rulemaking and thus this portion of the comment is not germane. The department further responds that CWD zones are not intended to be "a solution" to CWD, but are simply a management measure designed to provide important biological information regarding the prevalence and distribution of the disease, if it is present. Finally, despite many allegations of harm to land values and hunting caused by the designation of CWD management zones, the department is not aware of any credible data or evidence that would lend credence to the accusations and responds that it is illogical to posit that the disease itself is not as dangerous as the attempt to control it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ranchers should not have to bear the burden of disposing of carcasses harvested on their property and the entire animal should be removed because remains of deer are an attractant to predators and feral hogs. The department disagrees that the rules require any parts of harvested deer to remain at the site of harvest and responds that although hunters and landowners are encouraged

to leave potentially infectious remains at the site of harvest, it is not a requirement. No changes were made as a result of the comment.

Several comments were incoherent and therefore are not germane; those comments were disregarded.

Several comments were or contained personal attacks aimed at department staff, which the department determined did not articulate any rational connection to the rules being deliberated. Those comments are therefore not germane and neither require nor merit a response.

The Deer Breeder Corporation, The Texas Deer Association, The Texas Chapter of the Wildlife Society, and The Texas Wildlife Association commented in support of adoption of the rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §42.0177, 42.0177, which authorizes the commission to modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of §§42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in Chapter 42; Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.82. Surveillance Zones; Restrictions.

The areas described in paragraph (1) of this section are SZs and the provisions of this subchapter applicable to SZs apply within the described areas.

(1) Surveillance Zones.

(A) Surveillance Zone 1: That portion of the state lying within a line beginning where U.S. 285 enters from the State of New Mexico in Reeves County; thence southeast along U.S. 285 to R.M. 652; thence west along R.M. 652 to Rustler Springs Rd./FM 3541 in Culberson County; thence south along Rustler Springs Rd./F.M. 3541 to F.M. 2185; thence south along F.M. 2185 to Nevel Road; thence west along Nevel Road to County Road 501; thence south along County Road 501 to Weatherby Road; thence south along Weatherby Road to F.M. 2185; thence southwest along to F.M. 2185 to S.H. 54; thence south on S.H. 54 to U.S. 90; thence south along U.S. 90 to the Culberson County line; thence southwest along the Culberson County line to the Rio Grande River in Hudspeth County; thence north along the Rio Grande to F.M. 1088; thence northeast along F.M. 1088 to S.H. 20; thence southeast along S.H. 20 to I.H. 10; thence southeast along I.H. 10 to F.M 1111; thence north on F.M. 1111 to U.S. 62/180; thence east and north along U.S. 62/180 to the New Mexico state line in Culberson County. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(B) Surveillance Zone 2. That portion of the state not within the CZ described in §65.81(1)(B) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at the New Mexico state line where F.M. 1058 enters Texas in Deaf Smith County; thence east along F.M 1058 to U.S. 60 in Randall County; thence north along U.S. 60 to U.S. 87; thence south along U.S. 87 to S.H. 217 in Canyon; thence east along S.H. 217 to F.M. 1541; thence north along F.M. 1541 to Loop 335; thence east and north along Loop 335 to S.H. 136; thence northeast along S.H. 136 to F.M. 687; thence north along F.M. 687 to F.M. 1319 in Hutchinson County; thence northwest along F.M. 1319 to F.M. 913; thence north along F.M. 913 to S.H. 152; thence west along S.H. 152 to the intersection of F.M. 1060; thence north along F.M. 1060 to F.M. 1573; thence north along F.M. 1573 to S.H. 15; thence northwest along S.H. 15 to the intersection of S.H. 15 and F.M. 1290; thence north along F.M. 1290 in Sherman County to the Oklahoma state line.

(C) Surveillance Zone 3. That portion of the state not within the CZ described in §65.81(1)(C) of this title (relating to Containment Zones; Restrictions) lying within a line beginning at the intersection of F.M. 1250 and U.S. Highway 90 in Hondo in Medina County; thence west along U.S. Highway 90 to the Sabinal River in Uvalde County; thence north along the Sabinal River to F.M. 187; thence north along F.M. 187 to F.M. 470 in Bandera County; thence east along F.M. 470 to Tarpley in Bandera County; thence south along F.M. 462 to 18th Street in Hondo; thence east along 18th Street to State Highway 173; thence south along State Highway 173 to U.S. Highway 90; thence west along U.S. Highway 90 to Avenue E (F.M. 462); thence south along Avenue E (F.M. 462) to F.M. 1250; thence west along F.M 1250 to U.S. Highway 90. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(D) Surveillance Zone 4: That portion of the state lying within a line beginning in Val Verde County at the confluence of Sycamore Creek and the Rio Grande River (29.242341°, -100.793906°); thence northeast along Sycamore Creek to U.S. 277; thence northwest on U.S. 277 to Loop 79; thence north along Loop 79 to the Union Pacific Railroad; thence east along the Union Pacific Railroad to Liberty Drive (north entrance to Laughlin Air Force Base); thence north along Liberty Drive to U.S. 90; thence west along U.S. 90 to Loop 79; thence north along Loop 79 to the American Electric Power (AEP) Ft. Lancaster-to-Hamilton Road 138kV transmission line (29.415542°, -100.847993°); thence north along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to a point where the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line turns northwest (29.528552°, -100.871618°); thence northwest along the AEP Ft. Lancaster-to-Hamilton Road 138kV transmission line to the AEP Ft. Lancaster-to-Hamilton Road maintenance road (29.569259°, -100.984758°); thence along the AEP Ft. Lancaster-to-Hamilton Road maintenance road to Spur 406; thence northwest along Spur 406 to U.S. 90; thence south along U.S. 90 to Box Canyon Drive; thence west along Box Canyon Drive to Bluebonnet Drive; thence southwest along Bluebonnet Drive to Lake Drive; thence south along Lake Drive to Lake Amistad (29.513298°, -101.172454°), thence southeast along the International Boundary to the International Boundary at the Lake Amistad dam; thence southeast along the Rio Grande River to the confluence of Sycamore Creek (29.242341°, -100.793906°). Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(E) Surveillance Zone 5: That portion of the state lying within the boundaries of a line beginning on U.S. 83 at the Kerr/Kimble County line; thence north along U.S. 83 to I.H. 10; thence northwest along I.H. 10 to South State Loop 481; thence west along South State Loop 481 to the city limit of Junction in Kimble County; thence following the Junction city limit so as to circumscribe the city of Junction before intersecting with F.M. 2169; thence east along F.M. 2169 to County Road (C.R.) 410; thence east along C.R. 410 to C.R. 412; thence south along C.R. 412 to C.R. 470; thence east along C.R. 470 to C.R. 420; thence south along C.R. 420 to F.M. 479; thence east along F.M. 479 to C.R. 443; thence south along C.R. 443 to U.S. 290; thence west along U.S. 290 to I.H. 10; thence southeast along I.H. 10 to the Kerr/Kimble County line; thence west along the Kerr/Kimble County line to U.S. 83. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(F) Surveillance Zone 6: That portion of the state within the boundaries of a line beginning at the intersection of State Highway (S.H.) 207 and Farm to Market (F.M.) 211 in Garza County; thence west along F.M. 211 to U.S. Highway (U.S.) 87 in Lynn County; thence north along U.S. 87 to F.M. 41 in Lubbock County; thence west along F.M. 41 to F.M. 179; thence north along F.M. 179 to F.M. 2641; thence east along F.M. 2641 to U.S. 62/82; thence east along U.S. 62/82 to S.H. 207 in Crosby County; thence south along S.H. 207 to F.M. 211 in Garza County. Beginning September 1, 2024, voluntary check stations and procedures take effect in this zone and there are no mandatory check station requirements.

(G) Surveillance Zone 7: That portion of the state lying within the boundaries of a line beginning at the intersection of S.H. 205 and U.S. Hwy. 80 in Kaufman County; thence east along U.S. 80 to North 4th Street in Wills Point in Van Zandt County; thence north along North 4th Street to F.M. 751; thence north along F.M. 751 to the south shoreline of Lake Tawakoni in Hunt County; thence west and north along the Lake Tawakoni shoreline to the confluence of Caddo Creek; thence northwest along Caddo Creek to West Caddo Creek; thence northwest along West Caddo Creek to I.H. 30; thence southwest along I.H. 30 to F.M. 548 in Rockwall County; thence southeast along F.M. 548 to S.H. 205 in Kaufman County; thence southeast along S.H. 205 to US Hwy. 80.

(H) Surveillance Zone 8. SZ 8 is that portion of Duval County lying within the area described by the following latitude-longitude coordinate pairs: -98.26853300300, 28.03848933420; -98.26589894960, 28.03870362130; -98.26382666860, 28.03873495650; -98.26168570770, 28.03864289040; -98.25955612520, 28.03842674530; -98.25744704830, 28.03808744760; -98.25536751610, 28.03762645160; -98.25332644050, 28.03704573330; -98.25133256850, 28.03634778150; -98.24939444400, 28.03553558780; -98.24752037150, 28.03461263300; -98.24571838040, 28.03358287260; -98.24399619060, 28.03245071990; -98.24236117890, 28.03122102650; -98.24120596430, 28.03024641260; -98.23764719940, 28.02709399450; -98.23726160830, 28.02674663390; -98.23582165410, 28.02533802570; -98.23448864450, 28.02384885000; -98.23326828560, 28.02228548750; -98.23216580050, 28.02065463650; -98.23118590620, 28.01896328400; -98.23033279420, 28.01721867560; -98.22961011190, 28.01542828500; -98.22902094780, 28.01359978130; -98.22856781790, 28.01174099660; -98.22825265510, 28.00985989210; -98.22807680110, 28.00796452400; -98.22804100110, 28.00606300930; -98.22814540020, 28.00416349070; -98.22838954320, 28.00227410180; -98.22877237680, 28.00040293240; -98.22929225400, 27.99855799380; -98.22994694140, 27.99674718450; -98.23073362900, 27.99497825630; -98.23164894210, 27.99325878140; -98.23268895600, 27.99159611980; -98.23384921300, 27.98999738820; -98.23512474120, 27.98846942880; -98.23651007630, 27.98701878090; -98.23753363050, 27.98606014200; -98.23812756760, 27.98552859310; -98.23859321690, 27.98512010170; -98.24017990520, 27.98384233640; -98.24185729580, 27.98265940820; -98.24361820790, 27.98157637890; -98.24545510380, 27.98059788250; -98.24736012140, 27.97972810560; -98.24932510790, 27.97897076960; -98.25134165440, 27.97832911470; -98.25340113210, 27.97780588610; -98.25549472890, 27.97740332210; -98.25761348710, 27.97712314520; -98.25974834150, 27.97696655390; -98.26189015850, 27.97693421810; -98.26402977450, 27.97702627610; -98.26615803560, 27.97724233410; -98.26826583590, 27.97758146780; -98.27034415740, 27.97804222640; -98.27066337070, 27.97812448630; -98.27092531890, 27.97819327050; -98.27118842850, 27.97825846810; -98.27135329220, 27.97829973340; -98.27339325350, 27.97888012930; -98.27538611560, 27.97957769600; -98.27732335070, 27.98038944910; -98.27919666850, 27.98131191570; -98.28099805140, 27.98234114890; -98.28271978900, 27.98347274480; -98.28435451100, 27.98470186160; -98.28483623730, 27.98509663910; -98.28781024450, 27.98758316700; -98.28886928050, 27.98850974440; -98.29030945540, 27.98991769800; -98.29164285070, 27.99140623600; -98.29286375500, 27.99296898800; -98.29396693720, 27.99459926560; -98.29494766950, 27.99629009130; -98.29580174750, 27.99803422780; -98.29652550850, 27.99982420930; -98.29711584690, 28.00165237330; -98.29757022780, 28.00351089340; -98.29788669820, 28.00539181270; -98.29806389510, 28.00728707800; -98.29810105160, 28.00918857400; -98.29799800060, 28.01108815860; -98.29775517530, 28.01297769680; -98.29737360750, 28.01484909670; -98.29685492350, 28.01669434310; -98.29620133730, 28.01850553260; -98.29541564090, 28.02027490720; -98.29450119300, 28.02199488750; -98.29346190410, 28.02365810530; -98.29230222030, 28.02525743510; -98.29102710420, 28.02678602470; -98.28964201370, 28.02823732480; -98.28894971860, 28.02889554680; -98.28793108410, 28.02983443720; -98.28713422910, 28.03054400140; -98.28554739730, 28.03182241250; -98.28386969320, 28.03300597540; -98.28210830270, 28.03408961830; -98.28027077130, 28.03506869700; -98.27836497140, 28.03593901570; -98.27639906860, 28.03669684430; -98.27438148670, 28.03733893480; -98.27232087180, 28.03786253530; -98.27022605450, 28.03826540150; -98.26853300300, 28.03848933420; and -98.30155203260, 27.19694473190.

(I) Surveillance Zone 9. SZ 9 is that portion of Gillespie County lying within the area described by the following latitude-longitude coordinate pairs: -99.17478378900, 30.46880138780; -99.17344441450, 30.46875473420; -99.17125882380, 30.46855395780; -99.16909308530, 30.46822975280; -99.16695648100, 30.46778350870; -99.16485816800, 30.46721713810; -99.16280713850, 30.46653306830; -99.16081218160, 30.46573423120; -99.15888184570, 30.46482405040; -99.15702440140, 30.46380642650; -99.15524780620, 30.46268572050; -99.15355967030, 30.46146673500; -99.15196722430, 30.46015469360; -99.15047728760, 30.45875521840; -99.14909623960, 30.45727430570; -99.14782999240, 30.45571830090; -99.14754058130, 30.45533004290; -99.14746306940, 30.45522422140; -99.14737913880, 30.45512214090; -99.14666615810, 30.45421953130; -99.14552016870, 30.45259509050; -99.14449930200, 30.45090918460; -99.14360792440, 30.44916903590; -99.14284984730, 30.44738209890; -99.14222831040, 30.44555602770; -99.14174596790, 30.44369864410; -99.14140487770, 30.44181790320; -99.14120649220, 30.43992185970; -99.14115165250, 30.43801863350; -99.14124058490, 30.43611637480; -99.14147290000, 30.43422322880; -99.14183910100, 30.43238297250; -99.14228093660, 30.43052147810; -99.14228943000, 30.43048580720; -99.14280487320, 30.42863512920; -99.14345886600, 30.42681762430; -99.14424860080, 30.42504107350; -99.14517068970, 30.42331308160; -99.14622117840,

30.42164104540; -99.14739556410, 30.42003212150; -99.14868881410, 30.41849319630; -99.15009538800, 30.41703085620; -99.15160926100, 30.41565135950; -99.15322395010, 30.41436060960; -99.15493254160, 30.41316413010; -99.15672772090, 30.41206704070; -99.15860180360, 30.41107403590; -99.16054676840, 30.41018936450; -99.16255429170, 30.40941681180; -99.16461578260, 30.40875968330; -99.16672242000, 30.40822079030; -99.16886519010, 30.40780243860; -99.17103492510, 30.40750641780; -99.17322234170, 30.40733399470; -99.17541808170, 30.40728590660; -99.17761275110, 30.40736235950; -99.17979696040, 30.40756302630; -99.18196136490, 30.40788704830; -99.18409670430, 30.40833303950; -99.18567792280, 30.40874767180; -99.18751824900, 30.40927339910; -99.18803417430, 30.40942481140; -99.18935156880, 30.40984877450; -99.19034348260, 30.41018862290; -99.19107608130, 30.41044831580; -99.19307014000, 30.41124667690; -99.19499972170, 30.41215633730; -99.19615230570, 30.41278765840; -99.19620639260, 30.41277708640; -99.19837615560, 30.41248060080; -99.20056363650, 30.41230770900; -99.20194435170, 30.41226263510; -99.20294397540, 30.41224783970; -99.20375910010, 30.41224434870; -99.20599390550, 30.41232031430; -99.20813828700, 30.41252049610; -99.21030289910, 30.41284403770; -99.21243848060, 30.41328955480; -99.21453589440, 30.41385514140; -99.21658616590, 30.41453837770; -99.21858052200, 30.41533634050; -99.22051042800, 30.41624561550; -99.22236762440, 30.41726231240; -99.22414416220, 30.41838208070; -99.22583243650, 30.41960012900; -99.22742521940, 30.42091124510; -99.22891569080, 30.42230981840; -99.23029746770, 30.42378986360; -99.23156463130, 30.42534504660; -99.23271175250, 30.42696871150; -99.23373391520, 30.42865390870; -99.23462673770, 30.43039342500; -99.23538639090, 30.43217981430; -99.23566797250, 30.43295099130; -99.23627361300, 30.43469349280; -99.23661526880, 30.43574792950; -99.23709940920, 30.43760495300; -99.23744236180, 30.43948543700; -99.23764264990, 30.44138133010; -99.23767354770, 30.44192498970; -99.23771679110, 30.44286474130; -99.23774265160, 30.44422426630; -99.23765562690, 30.44612659270; -99.23742518280, 30.44801991460; -99.23705229760, 30.44989612370; -99.23653856000, 30.45174718450; -99.23588616240, 30.45356516890; -99.23509789140, 30.45534228970; -99.23417711610, 30.45707093470; -99.23312777380, 30.45874369860; -99.23195435340, 30.46035341530; -99.23066187600, 30.46189318830; -99.22925587340, 30.46335642070; -99.22774236480, 30.46473684280; -99.22612783100, 30.46602853980; -99.22441918620, 30.46722597680; -99.22262374890, 30.46832402250; -99.22074921030, 30.46931797130; -99.21880360140, 30.47020356380; -99.21679525840, 30.47097700450; -99.21473278710, 30.47163497880; -99.21281331370, 30.47213170240; -99.21178735520, 30.47236856230; -99.21159906630, 30.47241152500; -99.20945503820, 30.47283059610; -99.20728394300, 30.47312727140; -99.20509508580, 30.47330027910; -99.20289784810, 30.47334887790; -99.20070164730, 30.47327285940; -99.19851589650, 30.47307254950; -99.19695268740, 30.47285163110; -99.19569920060, 30.47264807900; -99.19509647960, 30.47254524850; -99.19295965810, 30.47209943930; -99.19086109690, 30.47153349580; -99.18880978940, 30.47084984340; -99.18681452600, 30.47005141230; -99.18488385620, 30.46914162430; -99.18306770850, 30.46814718790; -99.18219751820, 30.46831433920; -99.18002644100, 30.46861055100; -99.17783763790, 30.46878309150; -99.17778919240, 30.46878415320; -99.17564049000, 30.46883122140; and -99.17478378900, 30.46880138780.

(J) Surveillance Zone 13. SZ 13 is that portion of Zavala County lying within the area described by the following latitude-longitude coordinate pairs: -99.49644185690, 29.02417661150; -99.49562966350, 29.02412334320; -99.49393660130, 29.02396991650; -99.49180196360, 29.02365131550; -99.49083631250, 29.02344929880; -99.48969562220, 29.02321065280; -99.48762660400, 29.02264981740; -99.48560377590, 29.02197121270; -99.48363580610, 29.02117774740; -99.48173112710, 29.02027282200; -99.47989789960, 29.01926031480; -99.47814397740, 29.01814456490; -99.47647687370, 29.01693035390; -99.47490372870, 29.01562288470; -99.47343127950, 29.01422776020; -99.47206583050, 29.01275095820; -99.47081322730, 29.01119880640; -99.46967883080, 29.00957795500; -99.46866749500, 29.00789534810; -99.46797379780, 29.00655894600; -99.46771833640, 29.00603193930; -99.46752808670, 29.00563118690; -99.46677531270, 29.00384692620; -99.46637898190, 29.00272972640; -99.46593095580, 29.00137117720; -99.46570890210, 29.00066465370; -99.46522755050, 28.99880927960; -99.46488527500, 28.99693020200; -99.46468353340, 28.99503546850; -99.46462318140, 28.99313319330; -99.46470446910, 28.99123152270; -99.46492704020, 28.98933859940; -99.46528993350, 28.98746252860; -99.46579158710, 28.98561134250; -99.46642984560, 28.98379296650; -99.46720196900, 28.98201518510; -99.46810464460, 28.98028560840; -99.46913400180, 28.97861163980; -99.47028562810, 28.97700044430; -99.47155458850, 28.97545891780; -99.47293544650, 28.97399365780; -99.47442228750, 28.97261093490; -99.47600874410, 28.97131666650; -99.47768802360, 28.97011639080; -99.47945293670, 28.96901524400; -99.48129592860, 28.96801793770; -99.48320911090, 28.96712873900; -99.48518429580, 28.96635145260; -99.48721303080, 28.96568940400; -99.48928663490, 28.96514542580; -99.49139623540, 28.96472184510; -99.49353280620, 28.96442047420; -99.49568720610, 28.96424260250; -99.49785021770, 28.96418899080; -99.50001258690, 28.96425986860; -99.50070476990, 28.96430895700; -99.50164138890, 28.96438408740; -99.50222476060, 28.96442829400; -99.50384970280, 28.96458709060; -99.50598308400, 28.96490547770; -99.50808823700, 28.96534585460; -99.51015615440, 28.96590633740; -99.51217798800, 28.96658452800; -99.51414508630, 28.96737752500; -99.51604903110, 28.96828193540; -99.51788167410, 28.96929388970; -99.51963517120, 28.97040905800; -99.52130201620, 28.97162266860; -99.52287507310, 28.97292952830; -99.52434760620, 28.97432404490; -99.52571330930, 28.97580025050; -99.52696633260, 28.97735182770; -99.52810130760, 28.97897213590; -99.52911337060, 28.98065424020; -99.52999818300, 28.98239094070; -99.53054361870, 28.98364460250; -99.53071826050, 28.98407555150; -99.53092659400, 28.98460575220; -99.53154608850, 28.98642914040; -99.53202864370, 28.98828424880; -99.53237218580, 28.99016313510; -99.53257523590, 28.99205775510;

-99.53263691620, 28.99395999620; -99.53255695450, 28.99586171300; -99.53233568470, 28.99775476190; -99.53213313940, 28.99880562870; -99.53197404640, 28.99963103560; -99.53147358020, 29.00148249840; -99.53083642190, 29.00330122050; -99.53006529290, 29.00507941140; -99.52916348920, 29.00680945430; -99.52813486700, 29.00848393790; -99.52698382650, 29.01009568860; -99.52571529300, 29.01163780120; -99.52518092540, 29.01220517850; -99.52455981130, 29.01296021160; -99.52317917810, 29.01442606720; -99.52169239120, 29.01580939560; -99.52010581680, 29.01710426940; -99.51842624950, 29.01830514000; -99.51666088320, 29.01940686120; -99.51481728020, 29.02040471170; -99.51290333880, 29.02129441520; -99.51092725940, 29.02207215860; -99.50889750950, 29.02273460860; -99.50682278710, 29.02327892610; -99.50471198330, 29.02370277810; -99.50257414450, 29.02400434790; -99.50041843310, 29.02418234300; -99.49825408830, 29.02423600050; and -99.49644185690, 29.02417661150.

(K) Surveillance Zone 14. SZ 14 is that portion of Gonzales County lying within the area described by the following latitude-longitude coordinate pairs: -97.36173045860, 29.73476487270; -97.35841999840, 29.73572909520; -97.35730985270, 29.73599790480; -97.35517442860, 29.73638574070; -97.35301449860, 29.73665082110; -97.35083932010, 29.73679200990; -97.34865821580, 29.73680870180; -97.34648053390, 29.73670082540; -97.34431560810, 29.73646884300; -97.34239990550, 29.73615743850; -97.34190649300, 29.73606412650; -97.34190671230, 29.73606324300; -97.34162234480, 29.73601040010; -97.34160197820, 29.73600641250; -97.34103384450, 29.73589501060; -97.33927419950, 29.73550573800; -97.33853955680, 29.73532449340; -97.33820790740, 29.73524104940; -97.33613652360, 29.73464478870; -97.33411428730, 29.73393153740; -97.33214986420, 29.73310435250; -97.33025167130, 29.73216677900; -97.32842784140, 29.73112283510; -97.32668618780, 29.72997699440; -97.32503417080, 29.72873416730; -97.32347886580, 29.72739967950; -97.32202693320, 29.72597924930; -97.32068458920, 29.72447896300; -97.31945757990, 29.72290524860; -97.31835115660, 29.72126484850; -97.31737005300, 29.71956479060; -97.31651846540, 29.71781235770; -97.31580003440, 29.71601505680; -97.31521783000, 29.71418058660; -97.31477433800, 29.71231680440; -97.31447144970, 29.71043169280; -97.31431045410, 29.70853332510; -97.31429203240, 29.70662983110; -97.31441625480, 29.70472936180; -97.31468258120, 29.70284005490; -97.31508986290, 29.70096999980; -97.31524008420, 29.70041109830; -97.31533867160, 29.70005991620; -97.31534933540, 29.70002085700; -97.31537721100, 29.69989042210; -97.31561952590, 29.69886022520; -97.31616598900, 29.69701742720; -97.31684930520, 29.69520977630; -97.31766654180, 29.69344501070; -97.31861419310, 29.69173068490; -97.31968819590, 29.69007413690; -97.32088394690, 29.68848245700; -97.32219632230, 29.68696245770; -97.32361969990, 29.68552064410; -97.32514798350, 29.68416318650; -97.32677462850, 29.68289589410; -97.32849267040, 29.68172418980; -97.33029475430, 29.68065308730; -97.33217316640, 29.67968716990; -97.33411986720, 29.67883057020; -97.33612652560, 29.67808695360; -97.33818455470, 29.67745950140; -97.34028514830, 29.67695089810; -97.34241931840, 29.67656331990; -97.34457793400, 29.67629842470; -97.34522764400, 29.67624315910; -97.34593132690, 29.67618937130; -97.34745544110, 29.67610354970; -97.34963517510, 29.67608687870; -97.35181149420, 29.67619469900; -97.35397508730, 29.67642654930; -97.35611669790, 29.67678143760; -97.35822716300, 29.67725784570; -97.36029745260, 29.67785373530; -97.36231870830, 29.67856655700; -97.36428228070, 29.67939326110; -97.36617976680, 29.68033031030; -97.36800304560, 29.68137369530; -97.36974431290, 29.68251895180; -97.37139611460, 29.68376117910; -97.37295137880, 29.68509506150; -97.37440344560, 29.68651489110; -97.37574609620, 29.68801459150; -97.37697357910, 29.68958774450; -97.37808063500, 29.69122761720; -97.37906251910, 29.69292719070; -97.37991502200, 29.69467919010; -97.38007233600, 29.69504149980; -97.38030924710, 29.69559828290; -97.38037069810, 29.69574389140; -97.38046237980, 29.69596292950; -97.38060775180, 29.69631023790; -97.38069661790, 29.69652254650; -97.38119733310, 29.69781155240; -97.38178069190, 29.69964571030; -97.38222541870, 29.70150925070; -97.38247087600, 29.70295005570; -97.38258525810, 29.70376040720; -97.38264398430, 29.70420454670; -97.38280631580, 29.70610282470; -97.38282608790, 29.70800630810; -97.38270320750, 29.70990684600; -97.38259967080, 29.71077223740; -97.38254300500, 29.71118588330; -97.38238152530, 29.71220994530; -97.38197549930, 29.71408022250; -97.38143019560, 29.71592331330; -97.38074794180, 29.71773132320; -97.37993165260, 29.71949650810; -97.37898481760, 29.72121130630; -97.37791148580, 29.72286837190; -97.37671624920, 29.72446060600; -97.37540422260, 29.72598118670; -97.37398102190, 29.72742359920; -97.37245274030, 29.72878166310; -97.37082592190, 29.73004955900; -97.36910753400, 29.73122185410; -97.36730493700, 29.73229352460; -97.36542585300, 29.73325997790; -97.36347833260, 29.73411707230; and -97.36173045860, 29.73476487270.

(L) Surveillance Zone 15. SZ 15 is that portion of Hamilton County lying within the area described by the following latitude-longitude coordinate pairs: -98.30890186100, 31.52080856360; -98.30794932010, 31.52111312350; -98.30663041230, 31.52160433670; -98.30453882930, 31.52224752590; -98.30240259180, 31.52277212140; -98.30023085480, 31.52317587480; -98.29838701260, 31.52342024630; -98.29779674970, 31.52348430330; -98.29744266270, 31.52352111120; -98.29522795990, 31.52367850440; -98.29300597870, 31.52371144540; -98.29078624260, 31.52361979290; -98.28857826560, 31.52340393970; -98.28639151120, 31.52306481110; -98.28423535150, 31.52260386050; -98.28211902720, 31.52202306340; -98.28005160800, 31.52132490900; -98.27804195320, 31.52051238950; -98.27609867410, 31.51958898700; -98.27423009660, 31.51855865880; -98.27244422590, 31.51742582020; -98.27074871200, 31.51619532570; -98.26915081680, 31.51487244810; -98.26765738290, 31.51346285570; -98.26627480470, 31.51197258840; -98.26500900050, 31.51040803120; -98.26386538780, 31.50877588720; -98.26284885940, 31.50708314880; -98.26196376320, 31.50533706750; -98.26123026400, 31.50358858940; -98.26116089640, 31.50340501280; -98.26108575260, 31.50322311290; -98.26077433900, 31.50243348340; -98.26042212550,

31.50143535020; -98.26025598810, 31.50093214120; -96.38126142310, 30.18214344400; -96.38183665460, -98.25999676100, 31.50010013920; -98.25952635350, 30.18217619090; -96.38400921490, 30.18242462620; 31.49823965550; -98.25919898190, 31.49635679210; -96.38615843640, 30.18279594060; -96.38827512360, -98.25905574040, 31.49503029550; -98.25902903550, 30.18328854540; -96.39035021980, 30.18390033310; 31.49470094170; -98.25898933510, 31.49413025900; -96.39237484600, 30.18462868620; -96.39434033840, -98.25895159760, 31.49222688830; -98.25905921660, 30.18547048840; -96.39623828560, 30.18642213800; 31.49032547710; -98.25931172250, 31.48843416710; -96.39677557990, 30.18671848320; -96.39737630640, -98.25970802560, 31.48656105640; -98.26024642070, 30.18705681000; -96.39866130040, 30.18781788400; 31.48471416460; -98.26092459440, 31.48290139860; -96.40040012450, 30.18897655180; -96.40204803700, -98.26173963580, 31.48113051900; -98.26268804820, 30.19023151300; -96.40359798240, 30.19157739740; 31.47940910640; -98.26376576480, 31.47774452930; -96.40504332360, 30.19300844530; -96.40637787030, -98.26496816620, 31.47614391260; -98.26629009980, 30.19451853250; -96.40759590570, 30.19610119620; 31.47461410700; -98.26772590230, 31.47316166000; -96.40869221050, 30.19774966280; -96.40966208600, -98.26926942400, 31.47179278750; -98.27091405500, 30.19945687630; -96.41050137400, 30.20121552930; 31.47051334750; -98.27265275360, 31.46932881530; -96.41120647440, 30.20301809350; -96.41177436110, -98.27447807640, 31.46824425950; -98.27638221010, 30.20485685250; -96.41220259500, 30.20672393420; 31.46726432100; -98.27835700500, 31.46639319280; -96.41248933450, 30.20861134490; -96.41263334350, -98.28039400980, 31.46563460230; -98.28248450780, 30.21051100340; -96.41263399690, 30.21241477560; 31.46499179510; -98.28461955390, 31.46446752160; -96.41249128340, 30.21431450920; -96.41220580560, -98.28679001270, 31.46406402480; -98.28898659820, 30.21620206880; -96.41177877780, 30.21806937060; 31.46378303110; -98.29014098570, 31.46368540150; -96.41121202080, 30.21990841710; -96.41101164340, -98.29105802310, 31.46362138060; -98.29211694850, 30.22042153380; -96.41096545730, 30.22057139600; 31.46356171410; -98.29433752070, 31.46352878800; -96.41026138110, 30.22237430900; -96.40942300250, -98.29473497400, 31.46353603630; -98.29532487920, 30.22413336690; -96.40845390570, 30.22584103440; 31.46354975520; -98.29714575950, 31.46363409140; -96.40735823510, 30.22748999610; -96.40614067850, -98.29925656320, 31.46383782320; -98.29992155240, 30.22907318760; -96.40480644620, 30.23058382600; 31.46392013580; -98.30001735370, 31.46393211340; -96.40336124960, 30.23201543880; -96.40181127600, -98.30220279320, 31.46427101630; -98.30435771380, 30.23336189210; -96.40016316260, 30.23461741630; 31.46473167360; -98.30622523130, 31.46524415350; -96.39842396800, 30.23577663130; -96.39660114190, -98.30647289550, 31.46531211460; -98.30853928800, 30.23683456960; -96.39470249320, 30.23778669750; 31.46600985560; -98.31054804890, 31.46682191150; -96.39273615650, 30.23862893460; -96.39071055710, -98.31249058200, 31.46774480760; -98.31435857380, 30.23935767140; -96.38863437490, 30.23996978450; 31.46877459520; -98.31614402880, 31.46990686780; -96.38665406210, 30.24043452890; -96.38629454620, -98.31783930390, 31.47113678030; -98.31943714120, 30.24050872300; -96.38615699110, 30.24053684440; 31.47245906970; -98.32093069890, 31.47386807740; -96.38400651130, 30.24090834500; -96.38196210040, -98.32231358040, 31.47535777350; -98.32357986200, 30.24114560010; -96.37956349050, 30.24135890920; 31.47692178230; -98.32472411840, 31.47855341010; -96.37943402890, 30.24137020050; -96.37724607410, -98.32574144540, 31.48024567310; -98.32662748180, 30.24149469100; -96.37505342490, 30.24149463060; 31.48199132780; -98.32737842740, 31.48378290170; -96.37286547920, 30.24137001960; -96.37069161440, -98.32799105970, 31.48561272540; -98.32846274800, 30.24112139200; -96.36854114770, 30.24074981350; 31.48747296510; -98.32879146460, 31.48935565660; -96.36642329560, 30.24025687660; -96.36434713430, -98.32897579330, 31.49125273900; -98.32901493640, 30.23964469410; -96.36232156110, 30.23891588970; 31.49315608930; -98.32890871740, 31.49505755710; -96.36035525580, 30.23807358680; -96.35845664370, -98.32874049480, 31.49632454780; -98.32865758250, 30.23712139540; -96.35663385910, 30.23606339620; 31.49694899980; -98.32826259850, 31.49882231700; -96.35489471070, 30.23490412300; -96.35324664800, -98.32798403670, 31.49984400490; -98.32779648930, 30.23364854370; -96.35169672940, 30.23230203860; 31.50047987360; -98.32753789800, 31.50130535380; -96.35025159190, 30.23087037740; -96.34891742260, -98.32686086660, 31.50311846110; -98.32604685300, 30.22935969440; -96.34769993250, 30.22777646210; 31.50488974190; -98.32509933650, 31.50661160890; -96.34660433170, 30.22612746380; -96.34563530760, -98.32472808170, 31.50721516030; -98.32462470820, 30.22441976380; -96.34479700450, 30.22266067780; 31.50737853960; -98.32452692970, 31.50754442790; -96.34409300610, 30.22085774120; -96.34389250760, -98.32443976440, 31.50769127470; -98.32336277290, 30.22026010760; -96.34343696920, 30.21884607860; 31.50935634570; -98.32258271760, 31.51042141350; -96.34307079300, 30.21760464660; -96.34264385410, -98.32248081610, 31.51055408730; -98.32205903390, 30.21573732990; -96.34235846540, 30.21384976040; 31.51109016650; -98.32073749190, 31.51262052910; -96.34221584080, 30.21195002190; -96.34221658270, -98.31930190410, 31.51407355140; -98.31775841660, 30.21004624990; -96.34236067920, 30.20814659660; 31.51544300780;-98.31611363840, 31.51672303020; -96.34264750500, 30.20625919600; -96.34307582360, -98.31437461370, 31.51790813390; -98.31254879110, 30.20439212950; -96.34364379300, 30.20255339060; 31.51899324040; -98.31131444720, 31.51962860120; and -96.34434897380, 30.20075085120; -96.34518833940, -98.30890186100, 31.52080856360. 30.19899222770; -96.34615828960, 30.19728504830; -96.34725466570, 30.19563662030; -96.34847276860, 30.19405399940; -96.34980737900, 30.19254395910; -96.35125277970, 30.19111296190; -96.35280278010, 30.18976713200; -96.35445074300, 30.18851222870;

(M) Surveillance Zone 16. SZ 16 is that portion of Washington County lying within the area described by the following latitude-longitude coordinate pairs: -96.37818600590, 30.18191727260; -96.38037260510, 30.18204179120;

-96.35618961250, 30.18735362180; -96.35801194480, 30.18629626920; -96.35990993970, 30.18534469510; -96.36187547380, 30.18450297110; -96.36390013580, 30.18377469850; -96.36597526150, 30.18316299340; -96.36809197190, 30.18267047270; -96.37024121010, 30.18229924380; -96.37241378070, 30.18205089490; -96.37460038870, 30.18192648840; -96.37543874540, 30.18191180110; -96.37683307230, 30.18190253200; and -96.37818600590, 30.18191727260.

(N) Surveillance Zone 17. SZ 17 is that portion of Frio County lying within the area described by the following latitude-longitude coordinate pairs: -99.40328546520, 29.07915307200; -99.40054361410, 29.07930707700; -99.39959203180, 29.07932990480; -99.39837754610, 29.07930452900; -99.39647797530, 29.07923416400; -99.39552760710, 29.07918691730; -99.39337280530, 29.07899001740; -99.39123728960, 29.07866970240; -99.38913021260, 29.07822734500; -99.38706060440, 29.07766484140; -99.38503733420, 29.07698460240; -99.38306907230, 29.07618954340; -99.38116425240, 29.07528307200; -99.37933103580, 29.07426907280; -99.37757727620, 29.07315189160; -99.37591048600, 29.07193631590; -99.37433780430, 29.07062755470; -99.37286596590, 29.06923121620; -99.37150127290, 29.06775328340; -99.37024956730, 29.06620008900; -99.36911620640, 29.06457828740; -99.36810603970, 29.06289482700; -99.36722338810, 29.06115691970; -99.36647202570, 29.05937201040; -99.36585516380, 29.05754774480; -99.36537543670, 29.05569193670; -99.36503489130, 29.05381253470; -99.36491425580, 29.05283759490; -99.36489588640, 29.05266156230; -99.36487114270, 29.05248613340; -99.36467883380, 29.05064465580; -99.36462040430, 29.04874228040; -99.36470369480, 29.04684062200; -99.36492834030, 29.04494782350; -99.36492990260, 29.04493785210; -99.36513955680, 29.04360136330; -99.36550301600, 29.04173550110; -99.36600684970, 29.03988466300; -99.36664733060, 29.03806674420; -99.36742170930, 29.03628952710; -99.36832666360, 29.03456061950; -99.36935831300, 29.03288742190; -99.37051223510, 29.03127709600; -99.37178348530, 29.02973653410; -99.37316661710, 29.02827232940; -99.37465570640, 29.02689074810; -99.37624437610, 29.02559770260; -99.37792582390, 29.02439872600; -99.37969285140, 29.02329894880; -99.38153789460, 29.02230307680; -99.38345305650, 29.02141537110; -99.38543014090, 29.02063962970; -99.38746068690, 29.01997917180; -99.38953600590, 29.01943682300; -99.39164721800, 29.01901490360; -99.39378529010, 29.01871521880; -99.39594107450, 29.01853905050; -99.39810534800, 29.01848715250; -99.40026885120, 29.01855974680; -99.40242232780, 29.01875652280; -99.40383950340, 29.01895496840; -99.40507296930, 29.01915187360; -99.40538531660, 29.01920309630; -99.40714446970, 29.01949925910; -99.40754918900, 29.01956969410; -99.40965507880, 29.02001173040; -99.41172359060, 29.02057384670; -99.41374587360, 29.02125363810; -99.41571327430, 29.02204819600; -99.41761737330, 29.02295412110; -99.41945002160, 29.02396753710; -99.42120337510, 29.02508410800; -99.42286992820, 29.02629905610; -99.42444254600, 29.02760718240; -99.42591449480, 29.02900288930; -99.42727947090, 29.03048020390; -99.42853162750, 29.03203280390; -99.42966559990, 29.03365404440; -99.43067652860, 29.03533698640; -99.43156007990, 29.03707442650; -99.43231246470, 29.03885892750; -99.43293045500, 29.04068285040; -99.43341139750, 29.04253838690; -99.43375322520, 29.04441759310; -99.43395446640, 29.04631242320; -99.43401425130, 29.04821476370; -99.43393231560, 29.05011646890; -99.43389479440, 29.05044302380; -99.43381891550, 29.05136303910; -99.43359979540, 29.05320442480; -99.43333423930, 29.05464078420; -99.43327382600, 29.05492277520; -99.43321578760, 29.05520515100; -99.43307319710, 29.05585635130; -99.43257055780, 29.05770747200; -99.43193118050, 29.05952574360; -99.43115779630, 29.06130337760; -99.43025371080, 29.06303275940; -99.42922278990, 29.06470648070; -99.42806944380, 29.06631737110; -99.42679860750, 29.06785852910; -99.42541572040, 29.06932335160; -99.42392670280, 29.07070556220; -99.42233793030, 29.07199923820; -99.42065620690, 29.07319883620; -99.41888873580, 29.07429921550; -99.41704308830, 29.07529566050; -99.41512717150, 29.07618390090; -99.41314919440, 29.07696012990; -99.41111763240, 29.07762102080; -99.40946862840, 29.07806258830; -99.40915738060, 29.07813820930; -99.40884682480, 29.07821599600; -99.40816655680, 29.07837952130; -99.40605412680, 29.07880173010; -99.40391477070, 29.07910163230; and -99.40328546520, 29.07915307200.

(O) Surveillance Zone 18. Surveillance Zone 18 is that portion of Bexar County within the boundaries of a line beginning at the intersection of Northwest Military Highway (FM 1535) and Interstate Highway (IH) Loop 410 in Bexar County; thence east along IH-Loop 410 to Wetmore Road; thence north along Wetmore Road to Bulverde Road; thence north along Bulverde Road to Evans Road; thence west along Evans Road to Stone Oak Parkway; thence west and south along Stone Oak Parkway to Huebner Road; thence west along Huebner Road to Northwest Military Highway; thence south along Northwest Military Highway (FM 1535) to IH-Loop 410.

(P) Surveillance Zone 19. Surveillance Zone 19 is that portion of Sutton County lying within the area described by the following latitude/longitude pairs: -100.40986652300, 30.53767808780; -100.40687035900, 30.53756298810; -100.40542910100, 30.53744473740; -100.40325776100, 30.53714147950; -100.40111400100, 30.53671590810; -100.39900700900, 30.53616984720; -100.39694581400, 30.53550563710; -100.39493925000, 30.53472612440; -100.39299591400, 30.53383465010; -100.39293782400, 30.53380578890; -100.39189123600, 30.53328460470; -100.39169138500, 30.53318508050; -100.39159646800, 30.53313781220; -100.39001163700, 30.53234855830; -100.38819800400, 30.53137776240; -100.38640585800, 30.53027424850; -100.38540915700, 30.52959078030; -100.38517529500, 30.52942408280; -100.38446710500, 30.52890490920; -100.38285677400, 30.52760829270; -100.38201089200, 30.52685430430; -100.38191045100, 30.52676147590; -100.38178255300, 30.52664327160; -100.38111955800, 30.52601222550; -100.37975758300, 30.52458829630; -100.37956131400, 30.52436928550; -100.37936276800, 30.52415181910; -100.37925043200, 30.52402809140; -100.37909298900, 30.52385371420; -100.37893155700, 30.52368209300; -100.37839912800, 30.52310108170; -100.37711211700, 30.52155735620; -100.37594452500, 30.51994405160; -100.37490134600, 30.51826807980; -100.37398704300, 30.51653662060; -100.37320552600, 30.51475709120; -100.37256013500, 30.51293711430;

-100.37205362700, 30.51108448540; -100.37168816200, -99.53515588530, 29.05780278860; -99.53304445540, 30.50920713950; -100.37146529800, 30.50731311670; 29.05822712300; -99.53238085450, 29.05833438650; -100.37138931500, 30.50573420810; -100.37138215500, -99.53097875240, 29.05854805030; -99.52989897550, 30.50530613560; -100.37136818500, 30.50454332340; 29.05871258420; -99.52968204380, 29.05874563860; -100.37136415100, 30.50417969230; -100.37142871100, -99.52957768340, 29.05876154010; -99.52810276210, 30.50227668610; -100.37163686100, 30.50038141070; 29.05895630000; -99.52594632240, 29.05913473540; -100.37198770300, 30.49850198100; -100.37247972600, -99.52378121340, 29.05918883270; -99.52161671500, 30.49664644410; -100.37311081500, 30.49482274390; 29.05911836020; -99.51946210410, 29.05892361970; -100.37387826000, 30.49303868790; -100.37477876900, -99.51732661520, 29.05860544610; -99.51521940060, 30.49130191300; -100.37580847900, 30.48961985380; 29.05816520300; -99.51314949120, 29.05760477730; -100.37696297800, 30.48799970990; -100.37823731600, -99.51112575750, 29.05692657110; -99.50915687170, 30.48644841580; -100.37962603500, 30.48497261070; 29.05613349110; -99.50725127020, 29.05522893620; -100.38112318600, 30.48357861070; -100.38272235700, -99.50541711770, 29.05421678320; -99.50366227190, 30.48227238140; -100.38441670200, 30.48105951250; 29.05310136950; -99.50199425000, 29.05188747540; -100.38619896500, 30.47994519410; -100.38806151800, -99.50042019610, 29.05058030250; -99.49894685120, 30.47893419420; -100.38999638900, 30.47803083890; 29.04918545220; -99.49758052360, 29.04770890130; -100.39199529700, 30.47723899330; -100.39404968800, -99.49632706260, 29.04615697640; -99.49519183280, 30.47656204530; -100.39615077200, 30.47600289140; 29.04453632670; -99.49417969180, 29.04285389540; -100.39828955800, 30.47556392370; -100.40045689500, -99.49329496900, 29.04111689010; -99.49254144740, 30.47524702040; -100.40264351000, 30.47505353730; 29.03933275180; -99.49221287920, 29.03836492570; -100.40352681100, 30.47501070630; -100.40483400900, -99.49192234750, 29.03750912310; -99.49144031330, 30.47496225730; -100.40614724700, 30.47493583960; 29.03565381490; -99.49121888180, 29.03453510970; -100.40834431100, 30.47499112610; -100.41053250400, -99.49098104700, 29.03317696470; -99.49097506950, 30.47517072010; -100.41270246300, 30.47547385330; 29.03314282980; -99.49082471970, 29.03228424410; -100.41484490400, 30.47589922900; -100.41695066100, -99.49070324520, 29.03152390860; -99.49050092860, 30.47644502700; -100.41901072400, 30.47710891240; 29.02962918350; -99.49044005000, 29.02772688760; -100.42101627800, 30.47788804470; -100.42295873900, -99.49052086170, 29.02582516710; -99.49074300940, 30.47877909030; -100.42482979600, 30.47977823670; 29.02393216510; -99.49110553370, 29.02205598690; -100.42662144000, 30.48088120870; -100.42741374400, -99.49160687440, 29.02020466550; -99.49224487710, 30.48143673340; -100.42767801400, 30.48156490430; 29.01838612670; -99.49301680320, 29.01660815570; -100.42954917500, 30.48256398170; -100.43134092500, -99.49391934080, 29.01487836330; -99.49494861980, 30.48366688770; -100.43304559600, 30.48486890300; 29.01320415410; -99.49610022800, 29.01159269390; -100.43465588800, 30.48616488400; -100.43616490800, -99.49736923050, 29.01005087990; -99.49875019060, 30.48754928480; -100.43756619200, 30.48901618100; 29.00858531070; -99.50023719340, 29.00720225840; -100.43885373900, 30.49055929470; -100.44002203300, -99.50182387080, 29.00590764150; -99.50350342890, 30.49217202160; -100.44106606600, 30.49384745910; 29.00470700000; -99.50526867740, 29.00360547150; -100.44198136500, 30.49557843590; -100.44276400200, -99.50711205990, 29.00260776930; -99.50902568660, 30.49735754250; -100.44341062200, 30.49917716290; 29.00171816230; -99.51100136760, 29.00094045680; -100.44391844700, 30.50102950740; -100.44428529600, -99.51303064830, 29.00027798010; -99.51510484540, 30.50290664550; -100.44450959000, 30.50480054040; 28.99973356660; -99.51721508360, 28.99930954550; -100.44459035900, 30.50670308270; -100.44452725000, -99.51776457050, 28.99921987280; -99.51825427880, 30.50860612590; -100.44432052300, 30.51050152060; 28.99914370980; -99.51871423200, 28.99907217270; -100.44397105700, 30.51238114970; -100.44348033800, -99.51917537570, 28.99900044860; -99.51963418840, 30.51423696310; -100.44285046200, 30.51606101250; 28.99892908540; -99.52010788880, 28.99885540460; -100.44208411700, 30.51784548480; -100.44118457900, -99.52056294830, 28.99878462150; -99.52215069880, 30.51958273620; -100.44015569500, 30.52126532480; 28.99857244420; -99.52430580280, 28.99839407920; -100.43936422100, 30.52240214130; -100.43860295900, -99.52646955800, 28.99833997450; -99.52863270740, 30.52344116190; -100.43856102800, 30.52349839240; 28.99841036160; -99.53078599610, 28.99860493920; -100.43806665300, 30.52417313230; -100.43770428400, -99.53292021160, 28.99892287500; -99.53502622280, 30.52465702990; -100.43643040000, 30.52620892020; 28.99936280890; -99.53709501860, 28.99992285860; -100.43504195900, 30.52768534590; -100.43354490300, -99.53911774720, 29.00060062810; -99.54108575310, 30.52907998100; -100.43194564400, 30.53038684970; 29.00139321760; -99.54299061430, 29.00229723600; -100.43025102900, 30.53160035220; -100.42846831700, -99.54345236190, 29.00255198710; -99.54482417860, 30.53271528830; -100.42660514500, 30.53372688020; 29.00330881550; -99.54657859790, 29.00442362760; -100.42466949400, 30.53463079270; -100.42266965800, -99.54824636210, 29.00563690220; -99.54982033120, 30.53542315210; -100.42061420700, 30.53610056250; 29.00694344770; -99.55129376570, 29.00833767310; -100.41851194700, 30.53666012060; -100.41637189000, -99.55266035540, 29.00981361180; -99.55391424690, 30.53709942830; -100.41420320600, 30.53741660270; 29.01136494750; -99.55505006790, 29.01298504070; -100.41201518900, 30.53761028440; and -100.40986652300, -99.55606295100, 29.01466695720; -99.55694855410, 30.53767808780. 29.01640349820; -99.55770307960, 29.01818723020; -99.55832329010, 29.02001051750; -99.55880652280, 29.02186555470; -99.55902550710, 29.02296599450; -99.55916895080, 29.02377847290; -99.55917608830, 29.02381889990; -99.55942434350, 29.02522500820;

(Q) Surveillance Zone 20. Surveillance Zone 20 is that portion of Zavala County lying within the area described by the following latitude/longitude pairs: -99.53869816580, 29.05677900640; -99.53607979490, 29.05756025510;

-99.55954954350, 29.02600341400; -99.55975319790, 29.02789802440; -99.55981543280, 29.02980028660; -99.55973597310, 29.03170205500; -99.55951515110, 29.03359518570; -99.55915390400, 29.03547157140; -99.55865377090, 29.03732317560; -99.55801688620, 29.03914206790; -99.55724597010, 29.04092045730; -99.55634431770, 29.04265072600; -99.55531578440, 29.04432546180; -99.55416477020, 29.04593748990; -99.55289620020, 29.04747990400; -99.55151550400, 29.04894609570; -99.55002859240, 29.05032978260; -99.54844183220, 29.05162503590; -99.54676201850, 29.05282630520; -99.54499634650, 29.05392844270; -99.54315237970, 29.05492672530; -99.54123801790, 29.05581687490; -99.53926146350, 29.05659507650; and -99.53869816580, 29.05677900640.

(R) Surveillance Zone 21. Surveillance Zone 21 is that portion of Frio County lying within the area described by the following latitude/longitude pairs: -99.12083230650, 28.76958447260; -99.11778310110, 28.77134826160; -99.11750469510, 28.77149809900; -99.11559202710, 28.77238163650; -99.11361783670, 28.77315303370; -99.11159058310, 28.77380898450; -99.10951895380, 28.77434667750; -99.10741182670, 28.77476380820; -99.10527823230, 28.77505858860; -99.10312731490, 28.77522975540; -99.10096829310, 28.77527657480; -99.09881042040, 28.77519884630; -99.09666294550, 28.77499690280; -99.09453507220, 28.77467161010; -99.09243592010, 28.77422436240; -99.09037448560, 28.77365707650; -99.08835960280, 28.77297218400; -99.08639990580, 28.77217262010; -99.08450379180, 28.77126181170; -99.08267938460, 28.77024366230; -99.08093450010, 28.76912253510; -99.07927661290, 28.76790323470; -99.07771282350, 28.76659098610; -99.07705952620, 28.76598864060; -99.07500948920, 28.76404337180; -99.07419982490, 28.76324613130; -99.07284394730, 28.76176520900; -99.07160093250, 28.76020930580; -99.07047610040, 28.75858508780; -99.06947426400, 28.75689951370; -99.06859970850, 28.75515980450; -99.06785617340, 28.75337341280; -99.06724683640, 28.75154799060; -99.06677429970, 28.74969135670; -99.06644057940, 28.74781146330; -99.06624709660, 28.74591636140; -99.06619720720, 28.74469569120; -99.06619591960, 28.74462003210; -99.06618628540, 28.74454484240; -99.06603151970, 28.74293884500; -99.06597910060, 28.74103665380; -99.06606795150, 28.73913551580; -99.06629768350, 28.73724357180; -99.06666730490, 28.73536892250; -99.06717522510, 28.73351959410; -99.06781926180, 28.73170350410; -99.06859665040, 28.72992842700; -99.06950405570, 28.72820196140; -99.07053758700, 28.72653149730; -99.07169281380, 28.72492418470; -99.07296478590, 28.72338690290; -99.07430131070, 28.72197252950; -99.07555500120, 28.72072808090; -99.07560174330, 28.72068178200; -99.07709034580, 28.71930395740; -99.07867794430, 28.71801488880; -99.08035774120, 28.71682009260; -99.08209385240, 28.71574129920; -99.08216527210, 28.71569988770; -99.08223175900, 28.71565252130; -99.08310203240, 28.71505346330; -99.08486677340, 28.71395801440; -99.08670896850, 28.71296663570; -99.08862073300, 28.71208356890; -99.09059388490, 28.71131259230; -99.09261998060, 28.71065700450; -99.09469035030, 28.71011961040; -99.09679613520, 28.70970270900; -99.09892832560, 28.70940808400; -99.10107779880, 28.70923699570; -99.10323535870, 28.70919017620; -99.10539177450, 28.70926782580; -99.10753782030, 28.70946961220; -99.10966431450, 28.70979467210; -99.11176215880, 28.71024161500; -99.11382237730, 28.71080852870; -99.11583615470, 28.71149298770; -99.11779487370, 28.71229206370; -99.11969015210, 28.71320233790; -99.12151387850, 28.71421991560; -99.12325824700, 28.71534044270; -99.12491579050, 28.71655912480; -99.12624236720, 28.71766060740; -99.12984207390, 28.72081922980; -99.13007913470, 28.72102936290; -99.13154223910, 28.72242827310; -99.13289846090, 28.72390852720; -99.13414199080, 28.72546379020; -99.13526750110, 28.72708740600; -99.13627016830, 28.72877242540; -99.13714569420, 28.73051163600; -99.13789032420, 28.73229759310; -99.13850086330, 28.73412265150; -99.13897469020, 28.73597899800; -99.13930976830, 28.73785868520; -99.13950465510, 28.73975366510; -99.13955850790, 28.74165582380; -99.13947108770, 28.74355701620; -99.13924276080, 28.74544910080; -99.13887449670, 28.74732397450; -99.13836786470, 28.74917360750; -99.13772502690, 28.75099007770; -99.13694872930, 28.75276560460; -99.13604228980, 28.75449258230; -99.13500958480, 28.75616361290; -99.13385503190, 28.75777153750; -99.13258357150, 28.75930946720; -99.13120064580, 28.76077081270; -99.13008888400, 28.76181723050; -99.12937546680, 28.76245636800; -99.12861802990, 28.76313492870; -99.12475768160, 28.76659306310; -99.12438093600, 28.76692513010; -99.12279314550, 28.76821481360; -99.12111298320, 28.76941021370; and -99.12083230650, 28.76958447260.

(S) Surveillance Zone 22. Surveillance Zone 22 is that portion of Brooks County lying within the area described by the following latitude/longitude pairs: -98.30155203260, 27.19694473190; -98.29784116430, 27.19801110280; -98.29765718150, 27.19805959080; -98.29630183790, 27.19841677700; -98.29629592620, 27.19841833490; -98.29497230210, 27.19876732070; -98.29370832140, 27.19907592710; -98.29293978950, 27.19923988270; -98.29293723160, 27.19924039900; -98.29287671900, 27.19925261470; -98.29158963400, 27.19951242980; -98.29131243660, 27.19956724650; -98.29127750910, 27.19957401040; -98.28968731120, 27.19988195130; -98.28965040290, 27.19988907820; -98.28961706030, 27.19989549840; -98.28883355230, 27.20004636310; -98.28859505070, 27.20009144880; -98.28728824230, 27.20033389800; -98.28653238830, 27.20046578530; -98.28443034100, 27.20074625160; -98.28231227160, 27.20090315270; -98.28018725770, 27.20093581610; -98.27806440710, 27.20084410180; -98.27595281810, 27.20062840290; -98.27386154050, 27.20028964390; -98.27179953720, 27.19982927690; -98.26977564490, 27.19924927500; -98.26779853680, 27.19855212430; -98.26587668500, 27.19774081260; -98.26401832430, 27.19681881720; -98.26223141670, 27.19579008970; -98.26052361720, 27.19465903870; -98.25890224140, 27.19343051130; -98.25737423340, 27.19210977230; -98.25594613680, 27.19070248110; -98.25462406600, 27.18921466800; -98.25341368060, 27.18765270770; -98.25232016090, 27.18602329270; -98.25134818560, 27.18433340360; -98.25050191230, 27.18259028020; -98.24978495940, 27.18080138970; -98.24920039080, 27.17897439480; -98.24875070290, 27.17711712110; -98.24843781410, 27.17523752340; -98.24833787160, 27.17415444050;

-98.24830351420, 27.17300440700; -98.24829712720, 27.17150503450; -98.24828889250, 27.16957184970; -98.24828556500, 27.16879067820; -98.24828727670, 27.16853269630; -98.24830445370, 27.16756250010; -98.24831306590, 27.16707605120; -98.24832080330, 27.16663901280; -98.24832864270, 27.16619620930; -98.24843176690, 27.16429815690; -98.24867345160, 27.16241020460; -98.24905265410, 27.16054043580; -98.24956774300, 27.15869685590; -98.25021650570, 27.15688735740; -98.25099615750, 27.15511968680; -98.25190335400, 27.15340141050; -98.25293420540, 27.15173988370; -98.25408429310, 27.15014221780; -98.25534868920, 27.14861525070; -98.25672197670, 27.14716551720; -98.25819827390, 27.14579922160; -98.25977125880, 27.14452221050; -98.26143419620, 27.14333994840; -98.26317996720, 27.14225749400; -98.26500109880, 27.14127947900; -98.26688979640, 27.14041008770; -98.26883797700, 27.13965303990; -98.27083730360, 27.13901157450; -98.27250539780, 27.13857459340; -98.27359293230, 27.13831775920; -98.27447494220, 27.13810945410; -98.27537787130, 27.13789620110; -98.27624026220, 27.13769251550; -98.27664949110, 27.13759585850; -98.27705254300, 27.13749936380; -98.27794235820, 27.13728632790; -98.27884469330, 27.13707028700; -98.27974275710, 27.13685526140; -98.28022617810, 27.13673951160; -98.28051003200, 27.13667277390; -98.28090932160, 27.13658061920; -98.28216959440, 27.13628974290; -98.28236477720, 27.13624527000; -98.28444046270, 27.13584253790; -98.28654113160, 27.13556209050; -98.28865779610, 27.13540512780; -98.29078140030, 27.13537232120; -98.29290285850, 27.13546381100; -98.29501309430, 27.13567920590; -98.29710307900, 27.13601758430; -98.29916387060, 27.13647749870; -98.30118665150, 27.13705698150; -98.30316276630, 27.13775355360; -98.30508375880, 27.13856423480; -98.30694140820, 27.13948555670; -98.30872776390, 27.14051357740; -98.31043517970, 27.14164389840; -98.31205634660, 27.14287168330; -98.31358432390, 27.14419167830; -98.31501256880, 27.14559823500; -98.31633496450, 27.14708533420; -98.31754584660, 27.14864661190; -98.31864002700, 27.15027538600; -98.31961281670, 27.15196468540; -98.32046004520, 27.15370727940; -98.32117807920, 27.15549570890; -98.32176383790, 27.15732231810; -98.32221480600, 27.15917928720; -98.32252904530, 27.16105866610; -98.32270520240, 27.16295240810; -98.32274593090, 27.16454018040; -98.32274380070, 27.16497236490; -98.32274144190, 27.16545089870; -98.32273898050, 27.16595027070; -98.32273443070, 27.16715645650; -98.32273424530, 27.16720558770; -98.32272955140, 27.16844996830; -98.32272931550, 27.16851249880; -98.32272432580, 27.16983523460; -98.32272077910, 27.17017751630; -98.32261907390, 27.17207564190; -98.32237877660, 27.17396375760; -98.32200090850, 27.17583377720; -98.32148708020, 27.17767769170; -98.32083948480, 27.17948760320; -98.32006088900, 27.18125575930; -98.31915462110, 27.18297458560; -98.31812455650, 27.18463671880; -98.31697510220, 27.18623503810; -98.31571117680, 27.18776269560; -98.31433819030, 27.18921314590; -98.31286202080, 27.19058017410; -98.31128898910, 27.19185792240; -98.30962583210, 27.19304091520; -98.30787967330, 27.19412408320; -98.30605799290, 27.19510278410; -98.30416859540, 27.19597282370; -98.30221957610, 27.19673047300; -98.30155203260, 27.19694473190;

(T) Surveillance Zone 23. Surveillance Zone 23 is that portion of Kimble County lying within the area described by the following latitude/longitude pairs: -99.93593588020, 30.41197645310; -99.93328467170, 30.41302363770; -99.93150701710, 30.41360245140; -99.92940461000, 30.41415395450; -99.92726506670, 30.41458506470; -99.92509755680, 30.41489393420; -99.92291137010, 30.41507923930; -99.92071587650, 30.41514018560; -99.91852048600, 30.41507651190; -99.91633460810, 30.41488849130; -99.91416761140, 30.41457692950; -99.91202878350, 30.41414316180; -99.90992729080, 30.41358904750; -99.90787213930, 30.41291696140; -99.90587213590, 30.41212978390; -99.90393585060, 30.41123088870; -99.90207157950, 30.41022412810; -99.90028730950, 30.40911381650; -99.89859068390, 30.40790471200; -99.89840156380, 30.40775959240; -99.89833318790, 30.40770672550; -99.89824568490, 30.40764131980; -99.89801173090, 30.40746480550; -99.89641003170, 30.40616208220; -99.89491010320, 30.40477132970; -99.89351836760, 30.40329850740; -99.89304774770, 30.40275268310; -99.89298993300, 30.40268396530; -99.89292555410, 30.40261978220; -99.89160665140, 30.40121925020; -99.89032912530, 30.39967064960; -99.88917121690, 30.39805292620; -99.88813788090, 30.39637301070; -99.88723353730, 30.39463809990; -99.88646205290, 30.39285562570; -99.88582672510, 30.39103322340; -99.88533026730, 30.38917869890; -99.88497479770, 30.38729999520; -99.88476183030, 30.38540515830; -99.88469226880, 30.38350230300; -99.88476640250, 30.38159957790; -99.88498390540, 30.37970513040; -99.88534383790, 30.37782707210; -99.88584465040, 30.37597344400; -99.88648419090, 30.37415218190; -99.88725971360, 30.37237108270; -99.88816789120, 30.37063777090; -99.88920482910, 30.36895966580; -99.89036608230, 30.36734395040; -99.89164667430, 30.36579754000; -99.89304111880, 30.36432705310; -99.89346576520, 30.36391590840; -99.89389023560, 30.36351269170; -99.89496790440, 30.36253556250; -99.89657166180, 30.36123544470; -99.89826999800, 30.36002904770; -99.90005564220, 30.35892153400; -99.90192095080, 30.35791764260; -99.90385794000, 30.35702166890; -99.90585832000, 30.35623744650; -99.90791353070, 30.35556833080; -99.91001477750, 30.35501718460; -99.91215306990, 30.35458636590; -99.91431925900, 30.35427771790; -99.91650407680, 30.35409256110; -99.91869817610, 30.35403168760; -99.92089217000, 30.35409535780; -99.92307667180, 30.35428329940; -99.92524233550, 30.35459470830; -99.92703154580, 30.35494882710; -99.92731182370, 30.35501133850; -99.92759306820, 30.35507049530; -99.92838971290, 30.35524704980; -99.93049003430, 30.35580085720; -99.93254412070, 30.35647257570; -99.93263024930, 30.35650368980; -99.93294560530, 30.35661805840; -99.93395361450, 30.35698099560; -99.93594581960, 30.35776525330; -99.93788132570, 30.35866365850; -99.93974497050, 30.35966989140; -99.94152877750, 30.36077964640; -99.94322511070, 30.36198817490; -99.94482670790, 30.36329030540; -99.94632671140, 30.36468046590; -99.94771869730, 30.36615270710; -99.94899670330, 30.36770072830; -99.95015525400, 30.36931790420; -99.95118938450, 30.37099731310; -99.95209466180,

30.37273176670; -99.95286720370, 30.37451384050; -99.95350369570, 30.37633590600; -99.95361031120, 30.37669040630; -99.95365369380, 30.37683846600; -99.95370394780, 30.37698488300; -99.95395811900, 30.37776501050; -99.95445584460, 30.37961926580; -99.95481264660, 30.38149777430; -99.95502698910, 30.38339249320; -99.95509794600, 30.38529530970; -99.95502520470, 30.38719807600; -99.95480906830, 30.38909264370; -99.95445045390, 30.39097089950; -99.95395088910, 30.39282479910; -99.95331250550, 30.39464640200; -99.95253802960, 30.39642790600; -99.95163077140, 30.39816167990; -99.95059461020, 30.39984029640; -99.94943397850, 30.40145656460; -99.94815384230, 30.40300355980; -99.94675968070, 30.40447465410; -99.94620659920, 30.40500740050; -99.94603539320, 30.40516827980; -99.94586803310, 30.40533217170; -99.94445688180, 30.40663147970; -99.94285301450, 30.40793220480; -99.94115439090, 30.40913920040; -99.93936828630, 30.41024729430; -99.93750235190, 30.41125173800; and -99.93593588020, 30.41197645310.

(U) Surveillance Zone 24. Surveillance Zone 24 is that portion of Medina County lying within the area described by the following latitude/longitude pairs: -99.03470528710, 29.32434210330; -99.03422756400, 29.32440747330; -99.03291391940, 29.32458721820; -99.03075068100, 29.32475719130; -99.02895229150, 29.32480381160; -99.02875152550, 29.32480424390; -99.02863847330, 29.32480448720; -99.02827985190, 29.32480525830; -99.02809031250, 29.32480519110; -99.02740657390, 29.32480323570; -99.02722320690, 29.32480226670; -99.02505316090, 29.32472324930; -99.02289366610, 29.32451998930; -99.02075397810, 29.32419335790; -99.01864326700, 29.32374475510; -99.01657057890, 29.32317610360; -99.01454479610, 29.32248984060; -99.01257459940, 29.32168890740; -99.01066843110, 29.32077673660; -99.00883445800, 29.31975723740; -99.00708053710, 29.31863477900; -99.00541418160, 29.31741417160; -99.00384252840, 29.31610064560; -99.00237230810, 29.31469982960; -99.00100981570, 29.31321772600; -98.99976088370, 29.31166068510; -98.99863085740, 29.31003537780; -98.99762457210, 29.30834876750; -98.99674633190, 29.30660807950; -98.99599989210, 29.30482077060; -98.99538844250, 29.30299449680; -98.99491459460, 29.30113708050; -98.99458036980, 29.29925647710; -98.99438719140, 29.29736074080; -98.99434691830, 29.29651781560; -98.99432953560, 29.29596087290; -98.99432707560, 29.29588205460; -98.99431665170, 29.29540490470; -98.99430585430, 29.29454003130; -98.99430531810, 29.29449708310; -98.99429396020, 29.29358729840; -98.99429334470, 29.29300462350; -98.99438410690, 29.29110300840; -98.99461654540, 29.28921066960; -98.99498965660, 29.28733570980; -98.99550183500, 29.28548615630; -98.99615087980, 29.28366992770; -98.99693400490, 29.28189479900; -98.99784785080, 29.28016836900; -98.99888849870, 29.27849802780; -99.00005148800, 29.27689092470; -99.00133183500, 29.27535393820; -99.00272405450, 29.27389364630; -99.00422218330, 29.27251629840; -99.00581980590, 29.27122778870; -99.00751008160, 29.27003363100; -99.00928577430, 29.26893893520; -99.01113928290, 29.26794838540; -99.01306267430, 29.26706621970; -99.01504771690, 29.26629621280; -99.01708591620, 29.26564165900; -99.01916855060, 29.26510535870; -99.02128670900, 29.26468960660; -99.02343132860, 29.26439618120; -99.02559323380, 29.26422633780; -99.02722045370, 29.26418051300; -99.02722429220, 29.26418048760; -99.02824740570, 29.26417369290; -99.02920167740, 29.26416734800; -99.02926492560, 29.26416692720; -99.02926609000, 29.26416691950; -99.03029132650, 29.26416009410; -99.03127050390, 29.26415356770; -99.03127540380, 29.26415353500; -99.03137356840, 29.26415288030; -99.03191629000, 29.26415315250; -99.03220849990, 29.26415652320; -99.03305178650, 29.26416950500; -99.03306536280, 29.26416971400; -99.03494185070, 29.26424522800; -99.03710002890, 29.26444827670; -99.03923845410, 29.26477462290; -99.04134797720, 29.26522287030; -99.04341957230, 29.26579110120; -99.04544437530, 29.26647688450; -99.04741372180, 29.26727728610; -99.04931918430, 29.26818888160; -99.05115260770, 29.26920777040; -99.05290614470, 29.27032959310; -99.05457228890, 29.27154954940; -99.05614390690, 29.27286241910; -99.05761426950, 29.27426258400; -99.05897707950, 29.27574405220; -99.06022649940, 29.27730048360; -99.06135717620, 29.27892521690; -99.06236426440, 29.28061129800; -99.06324344670, 29.28235151010; -99.06399095260, 29.28413840410; -99.06460357500, 29.28596433080; -99.06507868340, 29.28782147320; -99.06541423580, 29.28970188050; -99.06560878730, 29.29159750170; -99.06565220900, 29.29252392620; -99.06567764710, 29.29341130390; -99.06568806080, 29.29408776440; -99.06568814260, 29.29412626510; -99.06569010870, 29.29505110900; -99.06568898310, 29.29535094270; -99.06559961510, 29.29725261210; -99.06536854260, 29.29914508760; -99.06499674680, 29.30102026450; -99.06448581210, 29.30287011170; -99.06383791880, 29.30468670610; -99.06305583450, 29.30646226670; -99.06214290210, 29.30818918760; -99.06110302530, 29.30986007100; -99.05994065270, 29.31146775880; -99.05866075810, 29.31300536310; -99.05726881970, 29.31446629600; -99.05577079640, 29.31584429790; -99.05417310260, 29.31713346410; -99.05248258060, 29.31832827040; -99.05070647130, 29.31942359670; -99.04885238290, 29.32041474920; -99.04692825890, 29.32129748010; -99.04494234340, 29.32206800640; -99.04290314590, 29.32272302570; -99.04081940510, 29.32325973070; -99.03870005090, 29.32367582100; -99.03706741290, 29.32391071510; -99.03698887320, 29.32392025930; -99.03691194560, 29.32393709900; -99.03505982880, 29.32429358780; and -99.03470528710, 29.32434210330.

(V) Surveillance Zone 25. Surveillance Zone 25 is that portion of Cherokee County lying within the area described by the following latitude/longitude pairs: -95.16551813760, 31.88499767200; -95.16585785040, 31.88501179520; -95.16883776280, 31.88514836070; -95.17072236840, 31.88527950140; -95.17293080210, 31.88554853500; -95.17511390170, 31.88594019510; -95.17726232710, 31.88645280610; -95.17936688570, 31.88708417460; -95.18141857260, 31.88783159950; -95.18340860800, 31.88869188260; -95.18532847560, 31.88966134300; -95.18716995850, 31.89073583260; -95.18892517440, 31.89191075370; -95.19058660920, 31.89318107840; -95.19214714940, 31.89454137080; -95.19360011230, 31.89598580950; -95.19493927480, 31.89750821270; -95.19615889990, 31.89910206470; -95.19725376150,

31.90076054380; -95.19821916660, 31.90247655120; -95.19905097560, 31.90424274160; -95.19974562040, 31.90605155420; -95.20030011920, 31.90789524570; -95.20071208980, 31.90976592290; -95.20097975990, 31.91165557650; -95.20110197480, 31.91355611550; -95.20107820230, 31.91545940210; -95.20090853530, 31.91735728590; -95.20059369180, 31.91924163940; -95.20013501150, 31.92110439250; -95.19953445040, 31.92293756700; -95.19915728340, 31.92389976250; -95.19815357340, 31.92631908540; -95.19779084440, 31.92715263060; -95.19691477030, 31.92890324420; -95.19590628340, 31.93060123560; -95.19476969690, 31.93223933070; -95.19350987350, 31.93381051170; -95.19213220490, 31.93530804740; -95.19064258830, 31.93672552140; -95.18904740160, 31.93805686040; -95.18735347570, 31.93929635960; -95.18556806570, 31.94043870790; -95.18369881940, 31.94147900990; -95.18175374480, 31.94241280770; -95.17974117550, 31.94323609950; -95.17766973520, 31.94394535700; -95.17554830050, 31.94453754050; -95.17338596280, 31.94501011200; -95.17119198940, 31.94536104630; -95.16897578340, 31.94558883920; -95.16674684340, 31.94569251440; -95.16451472300, 31.94567162760; -95.16228898930, 31.94552626830; -95.16007918180, 31.94525705950; -95.15789477180, 31.94486515490; -95.15574512140, 31.94435223440; -95.15363944330, 31.94372049610; -95.15292604870, 31.94347588710; -95.15225794440, 31.94323930920; -95.15201777130, 31.94315426200; -95.15112625370, 31.94283856320; -95.14978698470, 31.94233530500; -95.14779612430, 31.94147452330; -95.14587558800, 31.94050452620; -95.14403360410, 31.93942947040; -95.14227806340, 31.93825396290; -95.14061648540, 31.93698304090; -95.13905598640, 31.93562215030; -95.13760324830, 31.93417712230; -95.13626449070, 31.93265414830; -95.13504544390, 31.93105975340; -95.13395132440, 31.92940076830; -95.13298681290, 31.92768430020; -95.13215603390, 31.92591770210; -95.13146253880, 31.92410854130; -95.13090928990, 31.92226456710; -95.13049864870, 31.92039367750; -95.13023236530, 31.91850388500; -95.13020804960, 31.91825324460; -95.13003171160, 31.91633466000; -95.12993523850, 31.91468469710; -95.12996044570, 31.91278142340; -95.13013153130, 31.91088362950; -95.13044775380, 31.90899944150;-95.13090775080, 31.90713692680; -95.13150954440, 31.90530405940; -95.13225054990, 31.90350868610; -95.13312758760, 31.90175849270; -95.13413689570, 31.90006097120; -95.13527414690, 31.89842338770; -95.13653446720, 31.89685275140; -95.13791245650, 31.89535578460; -95.13940221190, 31.89393889410; -95.14099735310, 31.89260814350; -95.14269104970, 31.89136922770; -95.14447605040, 31.89022744850; -95.14634471390, 31.88918769150; -95.14828904190, 31.88825440580; -95.15030071320, 31.88743158490; -95.15237111880, 31.88672274930; -95.15449139950, 31.88613093190; -95.15665248290, 31.88565866480; -95.15884512270, 31.88530796850; -95.16105993790, 31.88508034340; -95.16328745280, 31.88497676360; and -95.16551813760, 31.88499767200.

(W) Surveillance Zone 26. Surveillance Zone 26 is that portion of the state within the boundaries of a line beginning at the intersection of U.S. Highway 283 and County Road 176 in Coleman County; thence east along County Road 176 to State Highway (S.H.) 206; thence east along S.H. 206 to County Road 170; thence south along County Road 170 to County Road 171; thence south along C.R. 171 to County Road 113 in Brown County; thence south along C.R. 113 to Farm to Market (F.M.) 585; thence south along F.M. 585 to County Road 108 in Brown County; thence southwest along C.R. 108 to County Road 127 in Coleman County; thence southwest along C.R. 127 to F.M. 568; thence west along F.M. 568 to U.S. Highway 84, thence north along U.S. 84 to S.H. 206, thence north along S.H. 206 to U.S. 283; thence north along U.S. 283 to County Road 176.

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

(2) Restrictions.

(A) Except as provided in §65.87 of this title (relating to Exception) and subparagraph (B) of this paragraph, no person within a SZ may conduct, authorize or cause any activity involving the movement of a susceptible species, into, out of, or within a SZ under a permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, R, or R-1. Such prohibited activity includes, but is not limited to transportation, introduction, removal, authorizing the transportation, introduction or removal, or causing the transportation, introduction or removal of a live susceptible species into, out of, or within a SZ.

(B) Breeder Deer.

(i) Except as provided in Division 2 of this subchapter, a breeding facility that is within a SZ may:

(I) transfer to or receive breeder deer from any other deer breeding facility in this state that is authorized to transfer deer; and

(II) transfer breeder deer in this state for purposes of liberation, including to release sites within the SZ.

(ii) Deer that escape from a breeding facility within a SZ may not be recaptured unless specifically authorized under a herd plan.

(C) Breeder deer from a deer breeding facility located outside a SZ may be released within a SZ if authorized by Division 2 of this subchapter.

(D) Except as authorized by §65.83 of this title (relating to Special Provisions) breeder deer may not be transferred to or from a deer breeding facility that is:

(i) located within a SZ; and

(ii) subject to the provisions of §65.99 of this title (relating to Breeding Facilities Epidemiologically Connected to Deer Infected with CWD).

(E) Permits to Transplant Game Animals and Game Birds (Triple T permit). The department may authorize the release of susceptible species in a SZ under the provisions of a Triple T permit issued by the department under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E and the provisions of Subchapter C of this chapter, but the department will not authorize the trapping of deer within a SZ for purposes of a Triple T permit.

(F) Deer Management Permit (DMP). The department may issue a DMP for a facility in a SZ; however, any breeder deer introduced to a DMP facility in a SZ must be released to the property for which the DMP is issued and may not be transferred anywhere for any purpose.

§65.88. Deer Carcass Movement and Disposal Restrictions.

(a) Except as provided in this section, no person may transport into this state or possess any part of a susceptible species from a state, Canadian province, or other place outside of Texas where CWD has been detected in free-ranging or captive herds except for:

(1) meat that has been cut up and packaged (boned or filleted);

(2) a carcass that has been reduced to quarters with no brain or spinal tissue present;

(3) a cleaned hide (skull and soft tissue must not be attached or present);

(4) a whole skull (or skull plate) with antlers attached, provided the skull plate has been completely cleaned of all internal soft tissue;

(5) finished taxidermy products;

(6) cleaned teeth; or

(7) tissue prepared and packaged for delivery to and use by a diagnostic or research laboratory.

(b) In addition to the provisions of §65.10 of this title (Possession of Wildlife Resources) and except as may be otherwise prohibited by this subchapter, a department herd plan, or a quarantine or hold order issued by TAHC, a white-tailed deer or mule deer or part of a white-tailed or mule deer killed in this state may be transported from the location where the animal was killed to a final destination. Following final processing at a final destination, the parts of the animal not retained for cooking, storage or taxidermy purposes shall be disposed of only as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes;

(2) interment at a depth of no less than three feet below the natural surface of the ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested for disposal.

(c) The carcass of a white-tailed or mule deer may be deboned, prior to transportation to a final destination, at the location where the animal was taken, provided:

(1) the meat from each deboned carcass is placed in a separate package, bag, or container;

(2) proof-of-sex and any required tag is retained and accompanies each package, bag, or container of meat;

(3) the remainder of the carcass remains at the location where the animal was harvested, except that a head may be transported to a taxidermist as provided in subsection (f) of this section.

(4) For purposes of this subsection, "deboning" means the detachment and removal of all musculature described by Parks and Wildlife Code, §42.001(8), from the bone. Muscles must remain intact (except for physical damage occurring as a result of take) and may not be processed further (i.e, ground, chopped, sliced, etc.).

(5) Proof-of-sex and any required tag must accompany the meat from the time of harvest until the meat reaches a final destination.

(6) It is an offense for any person to possess:

(A) meat from a carcass possessed under this subsection that has been processed further than whole muscles;

(B) meat from more than one carcass in a single package, bag, or container.

(d) It is an offense for any person to dispose of those parts of an animal that the possessor does not retain for cooking, storage, or taxidermy purposes except as follows:

(1) by transport, directly or indirectly, to a landfill permitted by the Texas Commission of Environmental Quality to receive such wastes; or

(2) interment at a depth of no less than three feet below the natural surface of ground and covered with at least three feet of earthen material; or

(3) returned to the property where the animal was harvested.

(e) If a person takes a susceptible species in a CZ or SZ within which the department has not designated a mandatory check station, the person shall transport the head of the susceptible species to the nearest check station established by the department for the CZ or SZ in which the susceptible species was taken, provided such transport occurs immediately upon leaving the CZ or SZ where the animal was taken and occurs via the most direct route available.

(f) The skinned or unskinned head of a susceptible species from a CZ or SZ, other state, Canadian province, or other place outside of Texas may be transported to a taxidermist for taxidermy purposes, provided all brain material, soft tissue, spinal column and any unused portions of the head are disposed of prior to being transported to Texas, or disposed of in a landfill in Texas permitted by TCEQ to receive such wastes.

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 June 14, 2024.

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Todd S. George
Assistant General Counsel
Texas Parks and Wildlife Department
Effective date: July 4, 2024
Proposal publication date: April 19, 2024
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING

SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

31 TAC §357.34

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §357.34(g). The proposal is adopted without changes as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 983).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

House Bill 1565, 88th R.S. (2023), added a requirement for regional water plans to include information on implementation of large projects, including reservoirs, interstate water transfers, innovative technology projects, desalination plants, and other large projects as determined by the board. Information about the large projects includes expenditures of sponsor money, permit applications, and status updates on the phase of construction of a project. This rulemaking implements the requirements of HB 1565.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Subsection 357.34(g) is added to require that the regional water planning groups provide data related to recommended large water management strategies and associated projects in order to comply with HB 1565, 88th R.S. (2023). The rule lists the information needed and the types of strategies and projects that fall under the rule. More exact thresholds of what constitutes "large" will be provided in regional water planning contract technical guidance.

Remaining subsections are renumbered to accommodate the new provision.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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 intent of the rulemaking is to require additional information related to large water supply projects in the regional water plans.

Even if the rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§6.101 and 16.053. Therefore, this rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to require additional information related to large water supply projects in the regional water plans. The rule will substantially advance this stated purpose by requiring the regional water planning groups to include new information related to the implementation status of large water management strategies that are listed in the regional water plan.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation as required by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the TWDB further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation 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 and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The public comment period ended March 25, 2024. No comments were received, and no changes were made.

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.053.

This rulemaking affects Texas Water Code Chapter 16.

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 June 13, 2024.

TRD-202402596
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: July 3, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 475-3065

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts adopts the repeal of §3.334, concerning local sales and use taxes, without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2440). The rule will not be republished. The comptroller repeals existing §3.334 to replace it with new §3.334. The repeal of §3.334 will be effective the date the new §3.334 takes effect.

Brief explanation of the rulemaking.

It has been called to the comptroller's attention that the October 27, 2023, notice of proposed rulemaking did not contain a statement of fiscal implications for small businesses or rural communities as required by Government Code, Chapter 2006. See (48 TexReg 6340) (October 27, 2023). Therefore, the comptroller repeals the adopted rule as proposed in the October 27, 2023, notice of proposed rulemaking. The comptroller is simultaneously readopting the text of the rule effective on January 5, 2024, with amendments, under the same number and title, with the repeal to be effective as of the date the adopted rule.

Comments

The comptroller received comments from James Harris on behalf of the Coalition for Appropriate Sales Tax Law and its members, the cities of Coppell, Carrollton, Desoto, Farmers Branch, Humble, Kilgore, Lancaster, and Lewisville, in favor of the repeal of all revisions to the rule, starting with the version adopted in May 2020. The comptroller addresses the criticisms of the revisions in §3.334 in the preamble of the new §3.334, which the comptroller will adopt to be effective concurrently with this repeal.

Statement of the statutory or other authority under which the rule-making is adopted.

The repeal is adopted under Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture), 321.306 (Comptroller's Rules), 322.203 (Comptroller's Rules), and 323.306 (Comptroller's Rules), which authorize the comptroller to adopt rules to implement the tax statutes.

Sections or articles of the code affected.

The repeal affects Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; and Tax Code, Chapter 323.

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 June 14, 2024.

TRD-202402640

Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Effective date: July 4, 2024
Proposal publication date: April 19, 2024
For further information, please call: (512) 475-2220

34 TAC §3.334

The Comptroller of Public Accounts adopts new §3.334, concerning local sales and use taxes, without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2442). The rule will not be republished. The comptroller adopts new §3.334 to replace the existing §3.334 that the comptroller is repealing. The new §3.334 includes the text of existing §3.334, with the addition of subsection (b)(6) and supporting definitions.

In addition to soliciting written comments, the comptroller held a public hearing on May 9, 2024. The comptroller received oral and/or written comments regarding adoption of the rule from the following persons:

John Christian, Ryan, LLC, against the rule.

TJ Gilmore, Mayor of the City of Lewisville, against the rule.

Jim Harris, on behalf of the Coalition for Appropriate Sales Tax Law Enactment (CASTLE) and its members, the cities of Coppell, Farmers Branch, Grand Prairie, Humble, Kilgore, Lancaster, and Lewisville, against the rule.

John Kroll, HMWK, against the rule.

Mike Land, City Manager of the City of Coppell, against the rule.

Wes Mays, Mayor of the City of Coppell, against the rule.

Stephan L. Sheets, Attorney for the City of Round Rock, against the rule.

Rich Whitehead, Mayor of the City of Helotes, against the rule.

Summary of the Principal Reasons For and Against Adoption of the Rule

The comptroller's principal reason for adoption of the rule is to provide guidance to taxpayers and auditors regarding the application of the local sales and use tax consummation statutes.

The principal reasons alleged against adoption are: that the rule is not needed, that the rule will hurt cities and taxpayers, that the rule is a departure from prior comptroller policy, that the stated reasons for adoption have no factual basis, that the rule is inconsistent with the local sales and use tax consummation statutes, and that the notice of rulemaking did not comply with the requirements of the Administrative Procedure Act.

The subsequent discussion provides the reasons for adopting the rule without changes related to the comments received.

Summary of the Factual Bases for the Rule - Background

In January 2020, the comptroller initiated rulemaking to update its local sales and use tax rule. The comptroller subsequently adopted amendments in 2020, 2023, and 2024. (49 TexReg 53) (January 5, 2024), (48 TexReg 391) (January 27, 2023), (45 TexReg 3499) (May 22, 2020). The amendments implemented House Bill 1525, 86th Legislature, 2019, which placed local sales and use tax collection responsibilities on marketplace providers.

The amendments also implemented House Bill 2153, 86th Legislature, 2019, which set a single local use tax rate that remote sellers may elect to use. The amendments also expanded the local sales tax collection responsibilities of sellers based on the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080 (June 21, 2018). These amendments have been noncontroversial.

The rulemaking made other revisions to the text, which are now the subject of litigation in Cause No. D-1-GN-21-003198, *City of Coppell, Texas, et al. v. Glenn Hegar,* in the 201st District Court of Travis County Texas. The Plaintiff cities claim that the agency did not comply with the rulemaking procedures in Government Code, §2001.024 and Government Code, Chapter 2006. The comptroller initiated this rulemaking to address those claims by proposing the readoption of the rule, with amendments, along with a more complete statement of the elements required by Government Code, §2001.024 and Government Code, Chapter 2006.

The comptroller is addressing comments received in the current rulemaking, as well as the prior local tax rulemakings in 2020, 2023, and 2024. The orders adopting the prior rulemakings are available for inspection in the *Texas Register,* and contain additional explanations that augment this document.

Summary of the Factual Bases for the Rule - Subsection (a)(18) - The definition of "place of business of the seller."

Local sales and use taxes are generally sourced to where a sale or use is "consummated." Tax Code, §321.203 and §321.205. There are about three dozen sourcing provisions. *Id.* And, there are three potential locations where local sales tax can be soured: the location where the order was received, the location where the order was fulfilled, and the location where the order was delivered to the customer. *Id.* The sourcing outcome can be affected by whether an order is placed in person at, received at, or fulfilled at a seller's "place of business" in Texas.

Tax Code, §321.002(3)(A) uses 82 words to define "place of business of the retailer":

"(3)(A) 'Place of business of the retailer' means an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year. A warehouse, storage yard, or manufacturing plant is not a 'place of business of the retailer' unless at least three orders are received by the retailer during the calendar year at the warehouse, storage yard, or manufacturing plant."

The term "place of business of the retailer" is a term of art because the term is more limited than its plain and ordinary meaning. Many business activities can be conducted at a location without that location becoming a "place of business" for local tax sourcing. The definition specifically includes the concept of receiving orders for taxable items. For example, the corporate headquarters of a company may not be a "place of business" if no orders are received there. Additionally, a location is not a "place of business" simply because it receives orders. If that were the case, the legislature could have defined the phrase with those very few words, which can be counted on one hand. And, the final sentence indicates that business locations such as warehouses, storage yards, and manufacturing plants may not be "places of business."

Ultimately, the statutory test is a combination of elements -- whether a facility is an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items. The statutory references to an "established outlet, office, or location," operation "by the retailer or the retailer's agent or employee," and "receiving orders for taxable items" all suggest that the presence of sales personnel is a reasonable criterion for evaluating whether a facility is a "place of business."

Subsection (a)(18) defines "place of business of the seller" as follows:

"(18) Place of business of the seller - general definition--A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller. An 'established outlet, office, or location' usually requires staffing by one or more sales personnel. The term does not include a computer server, Internet protocol address, domain name, website, or software application. The 'purpose' element of the definition may be established by proof that the sales personnel of the seller receive three or more orders for taxable items at the facility during the calendar year. Additional criteria for determining when a location is a place of business of the seller are provided in subsection (b) of this section for distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices. An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a place of business of the seller if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or exists solely to rebate a portion of the tax imposed by those chapters to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under Tax Code, Chapters 321, 322, and 323 or solely to rebate a portion of the tax imposed by those chapters if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services."

The first sentence of subsection (a)(16) states: "A place of business of the seller must be an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items from persons other than employees, independent contractors, and natural persons affiliated with the seller." This definition tracks the statutory definition but adds a qualifier from the prior rule that allows a facility to make in-house courtesy sales without becoming a place of business.

The second sentence of the definition of "place of business of the seller" in subsection (a)(16) states: "An 'established outlet, office, or location' usually requires staffing by one or more sales personnel." The word "usually" clarifies that the presence of sales personnel is not an absolute requirement, but rather, an important factor that will often determine whether an outlet, office, or location is a "place of business." In subsequent subsections of the rule, the comptroller describes some examples.

The comptroller is adding the sales personnel language to provide an objective criterion for buyers, sellers, and auditors to consider. Does a facility have sales personnel? If it does, it is likely

a "place of business" -- an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items. If the facility does not have sales personnel, it is likely not a "place of business."

The reference to sales personnel is also consistent with the general objectives of the local tax statute. "It is a fundamental principle of statutory construction and indeed of language itself that words' meanings cannot be determined in isolation but must be drawn from the context in which they are used." *TGS-NOPEC Geophysical Co. v. Combs,* 340 S.W.3d 432, 441 (Tex. 2011). The context for the "place of business" definition is not limited to the consummation statutes. It also extends to the sales tax permit requirement. The requirement of a sales tax permit for each "place of business" suggests that presence of sales personnel is a reasonable factor to consider.

The third sentence in the definition of "place of business" in subsection (a)(16) states: "The term does not include a computer server, Internet protocol address, domain name, website, or software application." This sentence is consistent with the concept that a "place of business" usually requires the presence of personnel to receive the order. Even a broad, every-day usage of the term "place of business" does not include computer servers, Internet protocol addresses, and websites. Many sellers house their computer servers at a co-location facility or rent computer server space at a managed hosting site. An ordinary person would not consider the physical locations of these computer servers to be places of business of the seller. Similarly, an ordinary person would not perceive an Internet protocol address, a domain name, or a website as an "established outlet, office, or location" so as to constitute a place of business in ordinary usage. And, in this statutory context, which is narrower than ordinary usage, the comptroller has concluded that the legislature could not have intended that the receipt of an order by an automated mechanical device would make the device an "established outlet, office or location operated by the retailer."

In addition to being a reasonable interpretation of the statute and consistent with precedent, the comptroller's interpretation that computer servers and the software applications that run on the servers are not places of business, is a practical interpretation that will facilitate uniformity and ease of administration for taxpayers and auditors. Website orders can be received at multiple physical addresses - any locations that have Internet access. A website order is sent to an Internet protocol (IP) address. An IP address is not a permanent physical address. It is a series of numbers assigned to a device, such as a computer server. Websites may use dynamic IP addresses that are assigned by the network upon connection and that change over time. The public IP address of a website may simply be routing orders to different, private IP addresses. Load balancers may change the IP addresses that communicate with customers. Conversely, multiple websites may be hosted at a single IP address.

The computer server receiving an order may belong to the seller or it may belong to a third party. The computer server may be situated on the seller's premises, it may be situated at a co-location facility operated by a third party, or it may be situated at a web hosting facility operated by a third party. The computer server may be one of multiple servers that serve the same website from different physical addresses as part of a cloud distribution network. The computer server may route the order to multiple other servers for load balancing purposes. Conversely, a single computer server may serve multiple websites. Also, the seller may or may not know the physical address of the server receiving the order. The physical locations of computer servers that receive website orders are often random, variable, and uncertain. The best way to treat computer servers consistently and coherently is to uniformly recognize that they are not "established" places of business of the seller.

The fourth sentence of the definition of "place of business of the seller" in subsection (a)(16) states: "The 'purpose' element of the definition may be established by proof that sales personnel of the seller received three or more orders for taxable items at the facility during the calendar year." This language is consistent with the statutory language that a "'place of business of the retailer' ... includes any location at which three or more orders are received by the retailer during a calendar year."

The remaining sentences of the definition of "place of business of the seller" are noncontroversial.

Mr. Gilmore, Mr. Kroll, Mr. Land, and Mr. Mays do not believe that this definition simplifies local tax sourcing. However, the comptroller is under no illusions that the definition will eliminate all ambiguities. In some instances, the determination will depend upon the particular facts. But in many instances, it will be clear. And, the rule also makes clear that mere hardware installations are not "places of business of the seller." To that extent, the rule will help taxpayers understand how the comptroller interprets and intends to apply the statute.

Summary of the Factual Bases for the Rule - Subsection (b)(5) - A facility without sales personnel is usually not a "place of business of the seller."

Subsection (b)(5) provides:

"(5) A facility without sales personnel is usually not a 'place of business of the seller.' A vending machine is not an 'established outlet, office, or location,' and does not constitute a 'place of business of the seller.' Instead, a vending machine sale is treated as a sale by an itinerant vendor. See subsections (a)(10) and (c)(6) of this section. However, a walk-in retail outlet with a stock of goods available for immediate purchase through a cashier-less point of sale terminal at the outlet would be an 'established outlet, office, or location' so as to constitute a 'place of business of the seller' even though sales personnel are not required for every sale. A computer that operates an automated shopping cart software program is not an 'established outlet, office, or location,' and does not constitute a 'place of business of the seller.' A computer that operates an automated telephone ordering system is not an 'established outlet, office, or location,' and does not constitute a 'place of business of the seller.'"

Subsection (b)(5) provides examples of the application of the definition of "place of business of the seller," and the factual bases for subsection (b)(5) are the same as the for the definition. In addition, the treatment of vending machines is consistent with the treatment of vending machines in prior versions of the rule.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Subsections (a)(10) and (b)(5).

Some commenters asserted that a "place of business" does not have to be operated for the purpose of receiving orders for taxable items. According to the comments submitted by CASTLE:

"The statutory definition of 'place of business,' Tax Code, §321.002(3)(A), describes five different place of business categories: established outlets; established offices; established locations operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items;

any location at which three or more orders are received by the retailer during a calendar year; and warehouses, storage yards, or manufacturing plants that receive three or more orders in a calendar year. Tax Code, §321.002(a)(3)(A). The first two categories need not have as a purpose receipt of orders and do not need to receive orders to be a place of business."

CASTLE further commented that the function of an "established office" is "business." This interpretation would mean that any facility operated by a seller for a business purpose would be a "place of business" -- executive offices, administrative offices, research and development laboratories, maintenance facilities, vehicle garages, etc. The comptroller rejects this interpretation as unreasonable. The 1979 legislation, which adopted the definition of "place of business," required each "place of business" to have a sales tax permit. See 66th Legislature, 1979, Ch. 624, §3. That requirement is now in Tax Code, §321.303. It is unreasonable to think that the legislature intended that a maintenance facility would be required to have a sales tax permit. A more reasonable interpretation is that a "place of business," whether it is an outlet, office, or location, "must be operated by a seller for the purpose of receiving orders for taxable items," as the rule requires.

Mr. Mays and other commenters also alleged that there is no reason for the comptroller to amend its rule. But, CASTLE's interpretation of the "purpose" requirement illustrates the need for clarification. The CASTLE interpretation may work at cross-purposes with other commenters who claim the right to source all their sales to their "single place of business." If every taxpayer facility with a business purpose is in fact a "place of business" as CASTLE suggests, many of these commenters may have multiple places of businesses. The adopted rule states the comptroller's interpretation, and sets the stage for a definitive court resolution of the conflict between competing commenters.

Mr. Christian commented on the portion of the definition of "place of business" that excludes orders from "employees, independent contractors, and natural persons affiliated with the seller." He commented that the language was "extra-statutory." The comptroller disagrees. The language has been in the rule since 2014, when it was adopted without adverse comment. It allows a facility to make in-house courtesy sales to workers at the facility without the facility becoming a place of business. Courtesy sales to workers are insufficient to conclude that a facility was established for the purpose of receiving orders.

Mr. Christian and other commenters observed that the statutory definition of "place of business" does not mention sales personnel. However, an agency rule need not be limited to parroting the words of the statute. The courts have said that a rule may not impose additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions. *State Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Tex.,* 131 S.W.3d 314, 321 (Tex. App.--Austin 2004, pet. denied). The implication of that statement is that a rule may impose burdens, conditions, or restrictions that are consistent with the relevant statutory provisions. *E.g., id.* at 342 (court approved "formulaic means" not specified in the statute). Previous tax cases have approved comptroller rules that articulated requirements that were not explicitly stated in the statute. *Perry Homes v. Strayhorn,* 108 S.W.3d 444, 448 (Tex. App.--Austin 2003, no pet.); *DuPont Photomasks, Inc. v. Strayhorn,* 219 S.W.3d 414, 422 (Tex. App.--Austin 2006, pet. denied). The reference to sales personnel in the rule is consistent with the statutory reference to a retailer's employee in the definition of "place of business of the retailer."

As previously stated, the comptroller is adding the sales personnel language to provide an objective criterion for buyers, sellers, and auditors to consider. Does a facility have sales personnel? If it does, it is likely a "place of business" -- an established outlet, office, or location operated by a seller for the purpose of receiving orders for taxable items. If the facility does not have sales personnel, it is likely not a "place of business." This objective criterion is supported by the previously explained legislative history of the statute.

Mr. Sheets, citing former §3.334(h)(3)(B), commented that "the prior version of Rule 3.334 recognized that an Internet order is received at a place of business while the proposed amendments cause Internet orders to be received nowhere."

The comptroller responds that the comment overstates the effect of the prior rule and misunderstands the effect of the adopted rule. Prior to the 2020 amendments, §3.334(h)(3)(B) provided:

"(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. *When an order that is placed* over the telephone, *through the Internet,* or by any means other than in person *is received by the seller at a place of business in Texas,* and the seller fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center, the sale is consummated at the place of business at which the order for the taxable item is received."

(41 TexReg 260, 265) (2016) (former 34 TAC §3.334(h)(3), emphasis added); (39 TexReg 9597, 9606) (2014) (former 34 TAC §3.334(h)(3), emphasis added).

The former language only meant that a place of business may receive an order through the Internet, or any other method of communication except in-person communication. For example, a sales representative at a place of business in Texas could receive an order through the Internet in the form of a VOIP call or an email. But, the former language did not mean that every Internet order is automatically received at a place of business, as illustrated by the following comptroller rulings before and after the comptroller adopted §3.334 in 2014.

Comptroller Letter Ruling (STAR Accession No.) 200510723L (2005) stated:

"The location of the server does not create a 'place of business' for purposes of local tax collection."

And Comptroller Letter Ruling (STAR Accession No.) 200605592L (2006) similarly stated:

"The location of the server does not create a 'place of business' for purposes of local tax collection."

And Comptroller Letter Ruling (STAR Accession No.) 201906015L (2019) similarly stated:

"COMPANY operates **********'s online marketplace (Website) and various apps used by Texas customers to make online orders. ... Orders placed on the Website or through COMPANY's apps and processed and routed by servers are not received at a place of business."

Furthermore, the adopted rule does not mean that Internet orders are received "nowhere." Internet orders, such and VOIP calls and emails may be received at a place of business. And under subsection (b)(5), an Internet order received by an auto-

mated shopping cart is received somewhere - at the computer server -- but, that somewhere is not a "place of business of the seller."

Summary of the Factual Bases for the Rule - Subsections (b)(1) and (c)(7) - Distributions centers, manufacturing plants, storage yards, and warehouses, and when and where an order is "received."

Subsection (b)(1) provides:

"(1) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller for the purpose of selling taxable items where sales personnel of the seller receive three or more orders for taxable items during the calendar year from persons other than employees, independent contractors, and natural persons affiliated with the seller is a place of business of the seller. Forwarding previously received orders to the facility for fulfilment does not make the facility a place of business.

(B) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller."

And subsection (c)(7) provides:

"(7) The location where the order is received by or on behalf of the seller means the physical location of a seller or third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the seller where an order is initially received by or on behalf of the seller and not where the order may be subsequently accepted, completed or fulfilled. An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller. The location from which a product is shipped shall not be used in determining the location where the order is received by the seller."

The text of subsection (c)(7) is taken from Section 3.10.1C5 of the Streamlined Sales and Use Tax Agreement (SSUTA). See https://www.streamlinedsalestax.org/docs/default-source/agreement/ssuta/ssuta-as-amended-through-05-24-23-with-hyperlinks-and-compiler-notes-at-end.pdf.

In its 2014 rulemaking, the comptroller proposed a definition of "receive," but deleted the proposed definition in response to concerns stated in oral and written comments. See (39 TexReg 4179) (May 30, 2014) (proposed rule amendment) and (39 TexReg 9598) (December 5, 2014) (adopted rule amendment).

In its January 2023 rulemaking, the comptroller again declined to adopt a definition of "receive" and instead, addressed the two circumstances that were most prominently debated - automated website orders and fulfillment warehouses. Subsection (b) of the adopted rule articulated the comptroller's interpretation that an automated website "receives" the order and that a fulfillment warehouse does not "receive" the order when it is forwarded from the website to the warehouse. See (48 TexReg 400) (January 27, 2023).

Since then, it has become apparent that other circumstances also require a clear articulation of the comptroller's interpretation of the term "received." Thus, the comptroller is adopting a general standard that is applicable to all situations, as well as to automated website orders and fulfillment warehouses.

The adopted standard comports with the ordinary usage of the terms, as evidenced by the fact that the standard has been approved by twenty-four states under the Streamlined Sales Tax Agreement. The adopted standard will also promote uniformity with those states that have elected or will elect origin-based sourcing.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Subsections (b)(1) and (c)(7).

Most of the commenters are concerned with the effect of the subsections on fulfillment warehouses and similar facilities. Subsection (b)(1)(A) provides: "Forwarding previously received orders to a facility for fulfillment does not make the facility a place of business." Subsection (c)(7) similarly provides: "The location where an order is received ... means the physical location ... where an order is initially received ... and not where the order may be subsequently accepted, completed or fulfilled."

Subsection (c)(7) explicitly limits receipt to the location where the order is initially received, ruling out intermediate and final locations where an order might be accepted, completed, or fulfilled. Subsection (c)(7) also explicitly states the criteria for determining when an order is received: "An order is received when all of the information from the purchaser necessary to the determination whether the order can be accepted has been received by or on behalf of the seller."

CASTLE commented that the modifier "initially" is not present in the portion of definition of "place of business" that refers to the location at which orders are "received." CASTLE, and Kyle Kasner in a previous rulemaking proceeding, also commented that the consummation statute in Tax Code, §321.203 sometimes refers to where the retailer "first receives" the order, implying that an order can be "received" at more than one place.

CASTLE also argued that the dictionary defines "receive" as "to take into one's possession, to take delivery of a thing, to get, or to come by," and a fulfillment warehouse cannot fulfill an order unless it gets or comes by the order. This argument may seem reasonable in the abstract, but not in context. When the statute and its legislative history are considered as a whole, the proper construction is the opposite - a fulfillment warehouse does not receive an order for purposes of the local sales tax statutes merely because fulfillment information has been sent to the warehouse.

With regard to statutory construction, the Texas Supreme Court has stated: "We must analyze statutory language in its context, considering the specific sections at issue as well as the statute as a whole. {Citation omitted}. While 'it is not for courts to undertake to make laws "better" by reading language into them,' we must make logical inferences when necessary 'to effect clear legislative intent or avoid an absurd or nonsensical result that the Legislature could not have intended.'" *Castleman v. Internet Money Ltd.,* 546 S.W.3d 684, 688 (Tex. 2018), quoting *Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n,* 518 S.W.3d 318, 338 (Tex. 2017).

Considering the local sales tax statute sections as a whole, the term "received" must be limited to the location where an order is initially received. This construction effects the clear legislative intent and avoids an absurd or nonsensical result that the legislature could not have intended.

The legislature did not define "receiving," "received," or "order." So, the terms must be construed in the context in which they

are used. One context is the definition of "place of business of the retailer" in Tax Code, §321.002(3)(A). A "place of business of a retailer" is a location operated "for the purpose of receiving orders." One might say, as CASTLE does, that a purpose of a fulfillment warehouse is to receive the order because receipt is a necessary step in fulfillment. However, one might also reasonably say that while a sales office is operated for the "purpose of receiving orders," a fulfillment warehouse without sales personnel is not operated for such a purpose - the purpose is only fulfillment, which does not require the receipt of the entire order containing price and payment terms. The only necessary information is delivery information - the product description, quantity, and delivery location. Because there are at least two reasonable interpretations, the terms in this context are ambiguous.

In another context the meaning becomes clearer. That context is the consummation statute in Tax Code, §321.203. Consider Tax Code, §321.203(d):

"(d) If the retailer has more than one place of business in this state and Subsections (c) and (c-1) do not apply, the sale is consummated at:

(1) the place of business of the retailer in this state where the order is received; or

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent or employee who took the order operates."

Assume a situation in which the retailer has multiple retail stores in Texas (more than one place of business in the state), but a customer calls in an order to a Texas sales office and the order is fulfilled from a location outside of Texas, so that Tax Code, §321.203(c) and (c-1) indisputably do not apply. Also assume that information from the order is forwarded to the retailer's executive office in Texas for approval, to the retailer's Texas credit office for a credit check, to the retailer's Texas manufacturing facility for assembly, to the retailer's Texas storage lot for bundled shipping to a fulfillment center, to the retailer's fulfillment center for fulfillment to the customer, to the retailer's Texas accounting office for billing, and to the retailer's Texas controller for collection on the account.

In the sense proposed by CASTLE, all these locations "received" the "order" to complete their assigned tasks. But this interpretation leads to absurd results. If the "order" was "received" at multiple locations, so that each location became a "place of business," it would be impossible to identify the particular location where the local tax should be sourced.

Furthermore, Tax Code, §321.203(d) refers to "*the* place of business ... where the order is received," indicating that there is a singular location where the order is received. The most reasonable singular location, and perhaps the only reasonable singular location, is where the information necessary to accept the order is initially received as provided in subsection (c)(7). In the example above, the location where the order is received would be the Texas sales office.

This example regarding Tax Code, §321.203(d) also illustrates the need for additional clarity. Subsection (b)(1)(A) explicitly provides that a fulfillment center is not a "place of business" simply because orders may be forwarded to the facility for fulfillment. But subsection (b)(1)(A) does not explicitly eliminate the possibility that other locations are "places of business," such as locations where orders are accepted or otherwise completed. Subsection (c)(7) explicitly eliminates those possibilities. There is a single location where an order is received - the initial location where all the information necessary for acceptance has been received. With this clarification, the consummation statute can be applied with greater certainty.

CASTLE commented: "For all practical purposes an order placed on a website is typically received at the same time at various locations, including fulfillment centers." However, for the practical purpose of sourcing local tax, there is a single location where a website order is initially received - the Web server. According to a report from the group's own expert, Amit Basu: "...the Buyer places the online order by communicating with a Web server that manages the Seller's Web site. ... The Web server transmits the order electronically to the Seller's e-Commerce software program."

Mr. Kroll commented that it may be impossible to determine the location of initial receipt: "Some companies will have multiple redundant server/data center operations spread across multiple geographic locations." The comptroller agrees. As pointed out in the 2020 rulemaking, a computer server may be situated on the seller's premises, it may be situated at a co-location facility operated by a third party, or it may be situated at a web hosting facility operated by a third party. The computer server may be one of multiple servers that serve the same website from different physical addresses as part of a cloud distribution network. The computer server may route the order to multiple other servers for load balancing purposes. Conversely, a single computer server may serve multiple websites. The seller may or may not know the physical address of the server receiving the order. If the seller does not even know the physical location of the server, an ordinary person would not consider the physical location of the computer server to be a place of business of the seller. So, the best way to treat these orders consistently and coherently is to treat them uniformly as being received at locations that are not places of business of the seller. If a server is not a "place of business" of the seller, then the exact location of the server does not have to be determined because the location will not determine the sourcing of local sales tax.

The comptroller's application of the statute to fulfillment centers is also supported by statutory history. Prior to 1979, the consummation statute had no provision for sourcing to where an "order" was "received," and the statute provided:

"If the retailer has more than one place of business in the State, the place or places at which retail sales, leases, and rentals are consummated shall be the retailer's place or places where the purchaser or lessee takes possession and removes from the retailer's premises the articles of tangible personal property, or if the retailer delivers the tangible personal property to a point designated by the purchaser or lessee, then the sales, leases, or rentals are consummated at the retailer's place or places of business from which tangible personal property is delivered to the purchaser or lessee." Acts 1969, 61st Leg., 2nd C.S., Ch. 1. Art. 1 §42.

In 1979, the Texas Legislature added a definition of "place of business of the retailer," which was previously undefined. The definition required that the location be operated "for the purpose of receiving orders." Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3 (amended Article 1066c(B)(1)). The legislature also added a sourcing provision based on where the order is received, comparable to current Tax Code, §321.203(d):

"If neither possession of tangible personal property is taken at nor shipment or delivery of the tangible personal property is

made from the retailer's place of business within this State, the sale, lease, or rental is consummated at the retailer's place of business within the State where the order is received or if the order is not received at a place of business of the retailer, at the place of business from which the retailer's salesman who took the order operates."

Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3 (amended Article 1066c(B)(1)(c)). Like current Tax Code, §321.203(d), the legislature referred to "*the* place of business ... where the order is received," contemplating a single location, and not multiple locations. And like the current statute, the 1979 sourcing statute would be unworkable if an "order" could be "received" at multiple locations where order information might be sent for processing.

The 1979 amendments were originally set to expire on August 31, 1981. But, following an October 2, 1980, Interim Report of the House Ways and Means Committee, the legislature made the 1979 amendments permanent. Acts 1981, 67th Legislature, Ch. 838, §1.

Mr. Kroll commented that the comptroller "misremembers the legislative history." The comptroller disagrees. During the 1979 session of the legislature, a House Study Group analysis stated that the "bill is necessary to protect the state from possible consequences of the pending court suits." The analysis specifically referenced *"Dunigan Tool and Supply v. Bullock"* as one of those suits. The analysis is available at the Legislative Reference Library website at https://lrl.texas.gov/scanned/hroBillAnalyses/66-0/SB582.pdf.

In the *Dunigan* litigation, sales personnel took orders that were forwarded to pipe storage facilities where the orders were fulfilled. At the time of the 1979 legislation, the district court had ruled that the transactions should be sourced to the pipe storage facilities. *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633, 635 (Tex. Civ. App. - Austin, Sept. 6, 1979, writ ref'd n.r.e.). Therefore, when the 1979 House Study Group bill analysis stated that the bill was intended to protect the state from the consequences of the Dunnigan litigation, the analysis meant that the legislation was intended to reduce the circumstances in which transactions would be sourced to fulfillment warehouses, which at the time were often located in rural areas not subject to local sales tax. The legislature accomplished this objective by adding a definition of "place of business" that was limited to a location operated "for the purpose of receiving orders," and by adding a provision for sourcing transactions to where the order was received. Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3.

Mr. Kasner in a previous rulemaking proceeding commented that the proposed rule reverses the effect of the *Dunigan* decision. He is correct, because the rule attempts to follow the subsequent legislation, which was intended to reverse the effect of the Dunigan decision.

In the subsequent October 2, 1980, Interim Report of the House Ways and Means Committee, the committee considered whether to allow the recently adopted statutory definition of "place of business" to expire. The committee described the consequence: "The location of sale would no longer be tied to permitted outlets, salesmen's locations, or sales offices." Interim Report at 20. The committee understood that the phrase "operated for the purpose of receiving orders" meant sales activities and not ancillary activities necessary to subsequently effectuate the sale.

To be clear, under the 1979 legislation and today, a fulfillment warehouse could be and can be a "place of business." The legislature set a low threshold: "A warehouse, storage yard, or manufacturing plant may not be considered a 'place of business of the retailer' unless three or more orders are received by the retailer in a calendar year at such warehouse, storage yard, or manufacturing plant." Acts 1979, 66th Legislature, Ch. 624, Art. 1, §3. A typical warehouse, storage yard, or manufacturing plant would almost certainly process more than three orders in a calendar year. So, this explicit threshold requirement is an additional indication that the legislature did not intend for these facilities to automatically be "places of business" simply because they processed order information that was previously received at other locations. Instead, the legislature set a low threshold yet still expected these facilities to engage in at least some sales activities.

Mr. Gilmore commented: "This is a major revision to a state practice that has been in place for more than 50 years." CASTLE commented that the amendment is "inconsistent with his {the comptroller's} pre-2019 application of the statutory definition of 'place of business.'" The comptroller disagrees with these comments.

First, the comptroller's treatment of fulfillment warehouses goes as far back as Comptroller's Decision No. 15,654 (1985), which stated (emphasis added):

"But it seems to the administrative law judge that the legislature was amending the law if not entirely in reaction to the then-pending case of *Bullock v. Dunigan Tool & Supply Co.,* 588 S.W.2d 633 (Tex. Civ. App.-Texarkana, writ ref'd n.r.e.), at least partly in reaction to that case. And if that be so, then the legislature did not want warehousing and storage facilities (many of which are outside city limits) to be the places where sales were consummated for local sales tax purposes unless orders were actually received there by personnel working there, but wanted the office location out of which the salesman operated to be the place where the sales were consummated."

CASTLE commented: "The Comptroller misreads the decision." But, the text of the decision speaks for itself: "the legislature ... wanted the office location out of which the salesman operated to be the place where the sales were consummated."

Second, the text of former §3.334(h)(3) indicated that a fulfillment center is not automatically a "place of business" for local sourcing (emphasis added):

"(3) Consummation of sale. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state.

...

(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. When an order that is placed over the telephone, through the Internet, or by any means other than in person is received by the seller at a place of business in Texas, and the seller *fulfills the order at a location that is not a place of business of the seller in Texas,* such as a warehouse or distribution center, the sale is consummated at the place of business at which the order for the taxable item is received.

...

(D) Order fulfilled within the state at a location that is not a place of business. When an order is received by a seller at any location other than a place of business of the seller in this state, and the seller *fulfills the order at a location in Texas that is not a place of business of the seller,* then the sale is consummated at the

location in Texas to which the order is shipped or delivered, or the location where it is transferred to the purchaser."

(41 TexReg 260, 265) (2016) (former 34 TAC §3.334(h)(3), emphasis added); (39 TexReg 9597, 9606) (2014) (former 34 TAC §3.334(h)(3), emphasis added).

Third, the consummation rules in former §3.334(h)(3) were augmented with an explicit provision for fulfillment centers, which the former rule referred to as "distribution centers" (emphasis added):

"(2) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.

(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, *then* the facility is a place of business.

(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, *then* the entire facility is a place of business of the seller."

(41 TexReg 260, 263) (2016) (former 34 TAC §3.334(e)(2), emphasis added); (39 TexReg 9597, 9605) (2014) (former 34 TAC §3.334(e)(2), emphasis added).

If a distribution center were automatically a "place of business" for local tax sourcing as the Plaintiff cities contend, subparagraphs (B) and (C) would not be required - there would be no need for a salesperson or a sales office to "then" make the distribution center a "place of business" for local tax sourcing purposes.

Fourth, in addition to its rule, the comptroller distributed Publication 94-105, sometimes called the "Local Sales and Use Tax Bulletin - Guidelines for Collecting Local Sales and Use Tax," or "Tax Topics - Guidelines of Collecting Local Sales and Use Tax" (Guidelines). These Guidelines were posted on the comptroller's website and indexed in the comptroller's State Tax Automated Research System. Since at least 2007, the Guidelines referred to a "location within the state that is not a place of business (such as a warehouse or distribution center)." E.g., STAR Accession No. 200902596L (February 2009). The Guidelines were intended as a general guide and not as a comprehensive resource. But, an ordinary reader would not walk away with the impression that a taxpayer's fulfillment center was automatically a "place of business" for purposes of local tax sourcing.

Fifth, in 2016, the comptroller rewrote the Guidelines to be even more specific regarding fulfillment centers: "The warehouse from which the person ships those items is not a place of business, unless the warehouse separately qualifies as a place of business." STAR Accession No. 201606995L (June 1, 2016).

And, sixth, in 2019, a comptroller letter ruling discussed fulfillment centers, referring to the former rule, then in effect: "Scenario One: Taxpayer Retailer operates fulfillment centers in Texas that are not open to the public. ... When an order is received at a location that is not a place of business and is *fulfilled in Texas at a location that is not a place of business,* the sale is consummated at the location in Texas to which the order is shipped. See §3.334(h)(3)(D). For Scenario One, local sales and use tax is due based on the location where the order is delivered." STAR Accession No. 201906015L (June 13, 2019) (emphasis added).

Each of these documents, which predate the rulemaking, and which the comptroller indexed and made available for public inspection on the State Tax Automated Research (STAR) System, is consistent with the statement in the rule that the location from which a product is shipped shall not be used in determining the location where the order is received by the seller.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - The use of language from the SSUTA in subsection (c)(7).

In the rulemaking that adopted subsection (c))(7), the comptroller received comments that are discussed below.

Mr. Kroll commented: "The Texas Legislature, (the entity with constitutional responsibility for the state's Tax Policy), has had nine regular sessions to adopt the SSUTA's preferred origin sourcing model found in SSUTA 3.10.1. The Legislature has not acted, even in 2013 when then Senator Hegar was chairing the Senate Finance, Subcommittee on Fiscal Matters with Tax policy responsibility."

CASTLE similarly commented: "the Legislature, in general, rejected the Comptroller's efforts to become a member and be subject to the Agreement, and, more specifically, declined to adopt the language of 3.10.1 and change the definition of what is a 'place of business.'"

Mr. Land commented: "By not adopting the agreement, the legislature was rejecting the very language the Comptroller proposes to adopt..."

Clyde Hairston, Mayor of the City of Lancaster, commented: "Rule changes refer to the Streamline Sales and Use Tax Agreement. States participating in this agreement do not seem to have similar economic issues as the State of Texas. If the intent of the rule change is to position the state to participate in the Sales and Use Tax Agreement, further research is needed to better support the rationale for this action."

And, Rolin McPhee, City Manager of the City of Longview, commented: "This sentiment runs counter to the story of Texas. Yes, we should look to and learn from other states, but Texas should lead and not follow. We should not implement statewide policies because 'everyone else is doing it.'"

David Bristol, Mayor of the City of Prosper, had similar comments.

Although the legislature declined to adopt the SSUTA, it would be an overstatement to suggest that the legislature specifically rejected the language of a single subsection of the SSUTA. As CASTLE pointed out: "Therefore, prior to December 31, 2007, the Legislature had to agree to the quoted 3.10.1 language, as a step in allowing Texas to be subject to the Agreement. But doing so would have required not only that the Legislature radically revise the statutory definition of 'place of business' but make many other changes to the sections of the Tax Code addressing sales and use tax."

Texas has a unique, composite consummation statute, in which sales are sometimes sourced to where the order is received, sometimes sourced to where the order is fulfilled, and sometimes sourced to where the order is delivered. Adoption of the SSUTA

would require fundamental changes to this composite consummation statute, which the comptroller is not advocating or promoting. However, there is one area of overlap. Both systems use the receipt of an order as a factor in sourcing. In this area of overlap, it is entirely appropriate to consider how the SSUTA does it.

The comptroller has considered the language in the SSUTA and concluded that it is a reasonable and practical method of determining where and when an order is received. And, the SSUTA language has the added benefit of being a concept that other states have acknowledged, and a concept with which many taxpayers will already be familiar.

Summary of the Factual Bases for the Rule - Subsection (c) - Application of the consummation rules.

Subsection (c) states in relevant part:

"The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in Texas, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in Texas."

The language of subsection (c) tracks the language in the prior 2014 and 2016 versions of the rule:

"The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state."

(41 TexReg 260, 265) (2016) (former 34 TAC §3.334(h)(3); (39 TexReg 9597, 9606) (2014) (former 34 TAC §3.334(h)(3)).

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Subsection (c).

Mr. Sheets commented that the rule changes how Internet orders are sourced for retailers with a single place of business in Texas. However, the language of subsection (c) has the same effect as the language in the prior 2014 and 2016 versions of the rule - no special treatment for vendors with a single "place of business."

Mr. Sheets commented that the rule conflicts with Tax Code, §321.203(b), which provides:

"(b) If a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items are consummated at that place of business except as provided by Subsection (e)."

Tax Code, §321.203(b) describes the consummation principles for a seller that has only one place of business in the state. In the comptroller's view, those principles are consistent with the treatment of other sellers and do not require special treatment in the rule.

As a matter of statutory construction, Tax Code, §321.203(b) should be viewed in the context of the statute as a whole. *Castleman v. Internet Money Ltd.,* 546 S.W.3d 684, 688 (Tex. 2018). When the statute is considered as a whole, the only reasonable interpretation is that all retail sales associated with a single place of business are consummated at that single place of business, regardless of whether the order was placed in person there, the order was received there from a purchaser at another location, or the order was fulfilled there. But, the statute cannot reasonably mean that an order with no connection to that place of business would be consummated there.

Tax Code, §321.203 establishes a hierarchy among places of business involved in a transaction, subject to certain exceptions. The hierarchy is described in a summary chart in the Comptroller's Guide for Sellers. See https://comptroller.texas.gov/taxes/publications/94-105.php (Local Sales and Use Tax Collection - A Guide for Sellers). If an order is fulfilled from a place of business of the seller in Texas, the sale is consummated at that location even if the order is received at another place of business in Texas (except for orders received in person). Conversely, an order is consummated at the place of business of the seller in Texas where the order is received only if the order was not fulfilled from a place of business in Texas (except for orders received in person). Subsection (c) of the comptroller rule reflects this hierarchy.

The statutory provision in Tax Code, §321.203(b), for a seller with a single place of business in Texas, is simply a recognition that the hierarchy is not required in those circumstances. The outcome will be the same regardless of whether the order is received, fulfilled, or received and fulfilled from that place of business, and regardless of whether the order is placed at that location in person - the sale will be consummated at that place of business.

But the place of business must have a discrete connection to the sale for the sale to be consummated there. Tax Code, §321.203(b) cannot reasonably be interpreted to mean that a sale is consummated at the seller's single place of business in Texas, even if that place of business did not receive the order from the customer, did not fulfill the order to the customer, and was not the location where the order was delivered.

Suppose a reseller has a single place of business, located in City A, that consists only of a sales office. The reseller also has a fully-automated shopping website hosted by a server in City B that receives and processes an order from a customer in City C. The order is then fulfilled from a third-party manufacturer's warehouse in City D and shipped to the customer in City C. To make the customer in City C pay local sales tax to City A, a jurisdiction that had no relation to the customer or the transaction, would be an unreasonable reading of the statute that the Legislature could not have intended. See, *Castleman v. Internet Money Ltd.,* 546 S.W.3d 684, 688 (Tex. 2018) (making "logical inferences" necessary "to avoid an absurd or nonsensical result that the Legislature could not have intended.").

Another rule of statutory construction is that compliance with the constitutions of this State and the United States is intended. Government Code, §311.021(a). In the tax arena, as elsewhere, the United States Constitution requires due process. In tax cases, the United States Supreme Court has stated that due process "centrally concerns the fundamental fairness of governmental activity." *N. Carolina Dep't of Revenue v. The Kimberley Rice Kaestner 1992 Family Tr.,* 139 S. Ct. 2213, 2219, (2019), quoting *Quill v. North Dakota,* 504 U.S. 298, 312 (1992).

The "due course of law" provision of the Texas constitution provides protections similar to, and in some instances, greater than the protections in the federal due process clause. *Patel v. Tex. Dep't of Licensing & Regulation,* 469 S.W.3d 69, 86-87 (Tex. 2015) ("the Texas due course of law protections in Article I, §19, for the most part, align with the protections found in the Fourteenth Amendment to the United States Constitution. But, ... Section 19's substantive due course provisions undoubtedly were intended to bear at least some burden for protecting individual rights that the United States Supreme Court determined were not protected by the federal Constitution.").

A statute violates the Texas due course of law protection if the "statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest." *Id.* at 87.

The actual, real-world effect of Mr. Sheet's interpretation could not arguably be rationally related to, or is so burdensome as to be oppressive to taxpayers in light of, the governmental interest in local taxation. Specifically, there is no rational connection or sufficient government interest to make a purchaser in City C pay sales tax to City A simply because the vendor arranged its business such that it had a single sales office in City A that had nothing to do with the transaction.

Mr. Sheets commented that procedural due process requirements do not apply because Tax Code, §321.203(b) is the result of legislative action. However, the comptroller's statutory interpretation is based on substantive due process. See, *Patel,* 469 S.W.3d at 75.

Mr. Sheets also proposes to add a "special" exception for sellers with a single place of business in Texas. The comptroller declines to make the proposed revisions for the reasons stated in the preceding paragraphs. The City of Round Rock is challenging the comptroller's interpretation in the pending litigation. Again, it is appropriate to state the comptroller's interpretation in the rule so that those who disagree may challenge the interpretation in court.

Summary of the Factual Bases for the Rule - Subsection (b)(4) - Order received by a salesperson who is not at a place of business when the salesperson receives the order.

Subsection (b)(4) provides:

"(4) An order that is received by a salesperson who is not at a place of business of the seller when the salesperson receives the order is treated as being received at the location from which the salesperson operates. Examples include orders that a salesperson receives by mail, telephone, including Voice over Internet Protocol and cellular phone calls, facsimile, and email while traveling. The location from which the salesperson operates is the principal fixed location where the salesperson conducts work-related activities. The location from which a salesperson operates will be a place of business of the seller only if the location meets the definition of a 'place of business of a seller' in subsection (a)(16) of this section on its own, without regard to the orders imputed to that location by this paragraph."

Tax Code, §321.203(d) provides for consummation of a local sale at the place of business "from which the retailer's agent or employee who took the order operates." Prior to the 2020 amendment, the rule did not define the location from which a salesperson operates. The third sentence of subsection (b)(4) now provides in part: "The location from which the salesperson operates is the principal fixed location from which the salesperson conducts work-related activities..." A physical connection between the salesperson and the place of business is a reasonable interpretation of the location from which a salesperson operates.

The final sentence of subsection (b)(4) clarifies that the principal fixed location from which the salesperson conducts work-related activities may or may not be a place of business of the seller, depending upon whether the location meets the definitional requirements of subsection (a)(16). For example, if an entrepreneur conducts sales operations from the entrepreneur's residence, the entrepreneur will be operating out of a place of business of the seller. But if a person performs contract telemarketing from the person's residence, the person will not be operating out of a place of business of the seller because the residence is not "operated by the seller," as required by subsection (a)(16).

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Subsection (b)(4).

In the rulemaking that adopted subsection (b)(4), Mr. Kroll commented that subsection (b)(4) "no longer imputes the order to the place of business where the employee is assigned, and that the new policy does not accurately or easily reflect the mobile workforce of today." And Brian Pannell, North America Tax Director for Dell Inc., commented that subsection (b)(4) deviates from Tax Code, §321.203(d)(2) and "effectively changes sourcing rules for salespersons who are assigned to regional places of business but do their principal work-related activities at other locations."

The comptroller disagrees with these comments. Tax Code, §321.203(d) does not impute an order to the location where a salesperson is "assigned." Instead, the statute provides that in certain circumstances, an order may be imputed to the "place of business from which the retailer's agent or employee who took the order operates." And, although an order may be imputed to a place of business of the retailer if the agent or employee operates out of that place of business, the statute does not mandate that an agent or employee be assigned to, or operate out of, a place of business. If an agent or employee does not operate out of a place of business, Tax Code, §321.203(d) has no application. And, it would be unreasonable to allow a vendor to source sales to a place of business by merely "assigning" a salesperson to that location in the absence of any physical connection.

Summary of the Factual Bases for the Rule - Subsection (b)(6) -small and micro-businesses.

The comptroller adds subsection (b)(6) to the former rule:

"If a small business or a micro-business operates a single location out of which it conducts all of its business activities, the comptroller will presume that the location is a place of business of the seller."

The comptroller also adds following supporting definitions to subsection (a):

"Independently owned and operated business--a self-controlling entity that is not a subsidiary of another entity or otherwise subject to control by another entity, and that is not publicly traded."

"Micro-business--a legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has not more than 20 employees."

"Small business--a legal entity, including a corporation, partnership, or sole proprietorship, that:

(A) is formed for the purpose of making a profit;

(B) is independently owned and operated; and

(C) has fewer than 100 employees or less than $6 million in annual gross receipts."

The definition of "independently owned and operated business" is taken from Government Code, Chapter 2006, Small Busi-

nesses and Rural Communities Impact Guidelines, updated in December 2017.

The definitions of "micro-business" and "small business" are taken from Government Code, Chapter 2006.

The comptroller cannot make a location a "place of business" by rule if the statute does not allow it. But, the agency can presume that a location is a "place of business" based on indicative facts, such as a small, independent business that conducts all of its business operations out of a single location.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Subsection (b)6).

Mr. Sheets commented that the subsection does nothing to reduce the adverse economic effects on small and microbusinesses. Mr. Land commented that there is no rational policy reason for treating businesses differently based upon size or revenue, and Mr. Gilmore questioned the reasoning behind the differentiation. CASTLE commented that the presumption is contrary to the law and factually unsupported. And, Mr. Christian commented that the presumption should be expanded.

The comptroller responds that the agency routinely uses presumptions in applying statutes, and the courts have honored them. A word search of the Texas Administrative Code produces over 60 instances in which the comptroller rules use presumptions. For example, the Austin Court of Appeals recognized that "repainting is presumed to be a taxable activity unless the taxpayer affirmatively shows that the repainting meets the specific requisites of maintenance as set out in the rule." *GATX Terminals Corp. v. Rylander,* 78 S.W.3d 630, 635 (Tex. App. - Austin 2002, no pet.); 34 TAC §3.357(b)(8).

The rational policy reason for special treatment, and the size and revenue requirements have been mandated by the Texas Legislature in Government Code, Chapter 2006. And, the parameters are appropriate for the presumption. It is reasonable to assume that a small business or a micro-business that operates a single location out of which it conducts all of its business activities will receive three or more orders per calendar year at that location, making that location a place of business of the seller. It is less reasonable to make that assumption if the business operates out of more than one location, or if the business is an affiliate of another, creating the possibility that the order receipt and order fulfillment may occur in different locations.

Summary of the Factual Bases for the Rule - Subsections (c)(2)(B)(ii), (d)(2), and (i) - Seller's obligation to collect local use tax.

Subsection (c)(2)(B)(ii) provides that a remote seller that is required to collect state use tax must also collect local use tax. Subsection (d)(2) and subsection (i) provide that a non-remote seller is responsible for collecting local use tax regardless of the location of the seller in Texas. Physical presence in the local jurisdiction is no longer required. These expansions of the local sales tax collection responsibilities of sellers are based on the United States Supreme Court decision in *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080 (June 21, 2018).

The comptroller received no negative submissions or proposals regarding these subsections.

Summary of the Factual Bases for the Rule - Subsection (i)(3) - Single local tax option for remote sellers.

Subsection (i)(3) implements House Bill 2153, 86th Legislature, 2019, which sets a single local use tax rate that remote sellers may elect to use.

The comptroller received no negative submissions or proposals regarding this subsection.

Summary of the Factual Bases for the Rule - Subsection (k)(5) - Marketplace sales.

Subsection (k)(5) implemented House Bill 1525, 86th Legislature, 2019, which places local sales and use tax collection responsibilities on marketplace providers.

The comptroller received no negative submissions or proposals regarding this subsection.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Public benefits and costs.

Mr. Christian commented that there will be a significant fiscal implication for businesses that must invest in reprogramming software for enhanced local tax compliance, and the economic cost to the public must be estimated. Mr. Gilmore, Mr. Land, Mr. Sheets, and Mr. Mays also commented that the rule will increase business compliance costs.

The comptroller acknowledges that there may be additional compliance costs, since it is conceivable that the rule may cause some vendors to realize that they are noncompliant. If the vendors come into compliance by changing from single-location reporting to multiple-location reporting, their compliance burden may increase. And if vendors change from multiple-location reporting to single-location reporting, their compliance burden may diminish.

The total net economic cost cannot be reliably estimated for reasons explained in the preamble to the proposed rule. The comptroller cannot determine the number of vendors that would change from single-location report to multiple-location reporting. Furthermore, the cost of compliance with the statute cannot be a factor in the rulemaking because compliance with the statute is required with or without the rule.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Revenue Effect

The preamble to the proposed rule explained the methodology that the comptroller used to estimate the revenue effect. Mr. Mays, Mr. Sheets, Mr. Gilmore, Mr. Land, and CASTLE all commented that the analysis of the revenue impact on cities was insufficient, but did not identify any errors in the assumptions that the agency used in the estimate.

CASTLE contends that "there must be a dollar amount specific to each local government or a dollar amount that can be easily calculated from the methodology used by the Comptroller to generate an estimate." The comptroller responds that Government Code, §2001.024 has never been interpreted by any agency or any court to require individual estimates. There are over 1,700 local governments in Texas with a local sales tax. In all prior rulemakings, the comptroller has never estimated the loss of or increase in local sales tax revenue for each local government in Texas with a local sales tax. And, the comptroller is unaware of any other agency that has made individual estimates for each local government.

Furthermore, the statute does not require the comptroller to articulate a methodology for individual estimates that the agency is not required to make. If an individual jurisdiction wants to con-

duct its own investigation, the preamble to the proposed rule explained the data that the jurisdiction would have to obtain, and the preamble explained how a consultant used the data in his study. See, (49 TexReg 2440, 2443) (April 19, 2024).

CASTLE suggests that the comptroller could develop a sample of local governments. The comptroller responds that Government Code, §2001.024 does not require sampling. Furthermore, an aggregate estimate based on sample of individual jurisdictions would do little to tell individual jurisdictions how they would be affected.

Mr. Sheets suggested that the comptroller could have undertaken alternatives, such as making estimates for the top twenty most populated jurisdictions or making estimates for the cities involved in the lawsuit. The comptroller responds that Government Code, §2001.024 does not require selective, individual estimates.

The Administrative Procedure Act only requires a fiscal note showing "the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule." Government Code, §2001.024(a)(4)(C). The comptroller has done that. In addition, the rulemaking process has disclosed the types of cities and taxpayers that may be most affected - cities receiving substantial tax revenues from fulfillment centers, such as the CASTLE group, and cities receiving substantial tax revenues from taxpayers sourcing all their sales to a single location, such as the City of Round Rock.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Local employment impact statement.

CASTLE commented that the comptroller "fails to provide a non-conclusory explanation of why the impact cannot be determined." The comptroller disagrees. The explanation is stated in the preamble of the proposed rule.

Reasons Why the Comptroller Disagrees With Commenters' Submissions and Proposals - Government growth impact statement.

CASTLE comments that the preamble to the proposed rule "fails to discuss in any meaningful way" the government growth statement required by Government Code, §2001.0221. Comptroller Rule 11.1(d) states that an agency shall "reasonably describe" the effect on government growth. 34 TAC §11.1(d). Historically, the reasonable descriptions published by the comptroller, as well as other agencies, consist of statements of no effect without explanation, and statements of effect with brief explanations. The comptroller followed the historical approach in this rulemaking.

CASTLE comments that the rule will create or eliminate a government program if a local government loses significant local sales tax revenue. The comptroller responds that the rule itself does not create or eliminate a government program. The creation or elimination of local government programs is at the discretion of local governments.

CASTLE also comments that "the Comptroller has already admitted that there will be a decrease in the fees he receives." The comptroller acknowledges that to the extent that transactions previously sourced within an incorporated municipality would be sourced to an unincorporated area without a cumulative local tax rate levied by municipal (pursuant to a limited purpose annexation agreement), county, and/or special purpose taxing authorities commensurate with the cumulative local tax rate levied by the municipal, county, and/or special purpose taxing authorities applicable where the transactions were formerly sourced, there would be a reduction in aggregate local sales tax levies and consequent reduction in state service charge revenues under Tax Code, §§321.503, 322.303, and 323.503.

Statement of the statutory or other authority under which the rule is adopted.

Tax Code, §§111.002 (Comptroller's Rule; Compliance; Forfeiture), 321.306 (Comptroller's Rules), 322.203 (Comptroller's Rules), and 323.306 (Comptroller's Rules) authorize the comptroller to adopt rules to implement the tax statutes.

Sections or articles of the code affected.

Tax Code, §151.0595 (Single Local Tax Rate for Remote Sellers); Tax Code, Chapter 321, Subchapters A, B, C, D, and F; Tax Code, Chapter 322; and Tax Code, Chapter 323 are affected.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 14, 2024.

TRD-202402641
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Effective date: July 4, 2024
Proposal publication date: April 19, 2024
For further information, please call: (512) 475-2220

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.46

The Comptroller of Public Accounts adopts amendments to §5.46 concerning deductions for paying membership fees to certain state employee organizations, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2985). The rule will not be republished.

The amendments add a definition of CAPPS in new subsection (a)(1) and renumber the subsequent provisions accordingly.

The amendments to subsections (b)(1)(C) and (b)(2)(B) add a second method of establishing, changing or cancelling a payroll deduction for state employee organization membership fees. These provisions currently allow a state employee to establish, change or cancel a payroll deduction by submitting a written authorization form to the employer's human resource officer or payroll officer. The amendments to these provisions also allow a state employee to establish, change or cancel a payroll deduction by submitting an electronic authorization through CAPPS.

The amendments to subsection (b)(2)(D) make a conforming change to require state agencies to notify the affected eligible organization if a state employee submits an electronic authorization form through CAPPS cancelling a payroll deduction for state employee organization membership fees.

The amendments to subsection (b)(3)(C) make nonsubstantive changes to clarify and simplify the language in this provision.

The amendments to subsections (c) and (d) make conforming changes to apply the requirements regarding the effective date of authorizations and cancellations to electronic authorizations, in addition to written authorization forms.

The amendments to subsection (i)(3)(A), (B), and (D) update the references to renumbered provisions.

The amendments move subsection (k)(5) and (6) to new subsection (l)(2)(D) and (3), so that these provisions are placed in a subsection that is more closely related to the subject matter the provisions address. Specifically, since these provisions relate to the responsibilities of state agencies, they are being moved from subsection (k), which addresses the responsibilities of eligible organizations, to subsection (l), which addresses the responsibilities of state agencies. Subsequent provisions in subsections (k) and (l) are renumbered accordingly. The amendments also update the provisions regarding the acceptance of cancellation forms or cancellation notices to better address the responsibilities of state agencies.

The amendments to subsection (l)(2)(B) simplify the process for determining if a state employee organization identified on an authorization form is currently certified as an eligible organization. At this time, a state agency is required to check notification documents previously received from the comptroller to make this determination. These amendments will require a state agency to check the comptroller's website to confirm that the state employee organization is listed as an approved state employee organization for membership fee deduction.

The comptroller did not receive any comments regarding adoption of the amendments.

The amendments are adopted under Government Code, §403.0165, which authorizes the comptroller to adopt rules to administer payroll deductions for certain state employee organizations, and Government Code, §659.110, which authorizes the comptroller to adopt rules to administer the eligible state employee organization membership fee deduction programs authorized by Government Code, Chapter 659, Subchapter G, concerning supplemental deductions.

The amendments implement Government Code, §403.0165 and §§659.1031 - 659.110.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 13, 2024.

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Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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Proposal publication date: May 3, 2024
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.55

The Texas Department of Public Safety (the department) adopts amendments to §23.55, concerning Certified Emissions Inspection Station and Inspector Requirements. This rule is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2688) and will not be republished.

The adopted amendments add language which makes clear that emissions testing equipment must stay at the department-approved location and requiring that certified emissions inspection stations obtain and maintain a single static Internet Protocol (IP) address for purposes of the submission of vehicle emissions inspection results to the Texas Information Management System (TIMS) vehicle identification database. Requiring the use of a single static IP address will provide greater security and stability, decrease the potential for the interruption of service, reduce the potential for fraud, and enhance the department's oversight of the emissions inspection program.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.258, which authorizes the Department of Public Safety to adopt rules to require an inspection station to use the state electronic Internet portal.

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 June 13, 2024.

TRD-202402606
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 424-5848

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SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) adopts amendments to §23.62, concerning Violations and Penalty Schedule. This rule is adopted without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2690) and will not be republished.

The proposed rule amendment adds a violation to the administrative penalty schedule to conform with the proposed changes to §23.55, concerning Certified Emissions Inspection Station and Inspector Requirements.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.405, which authorizes the Public Safety Commission to deny, revoke, or suspend a license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
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