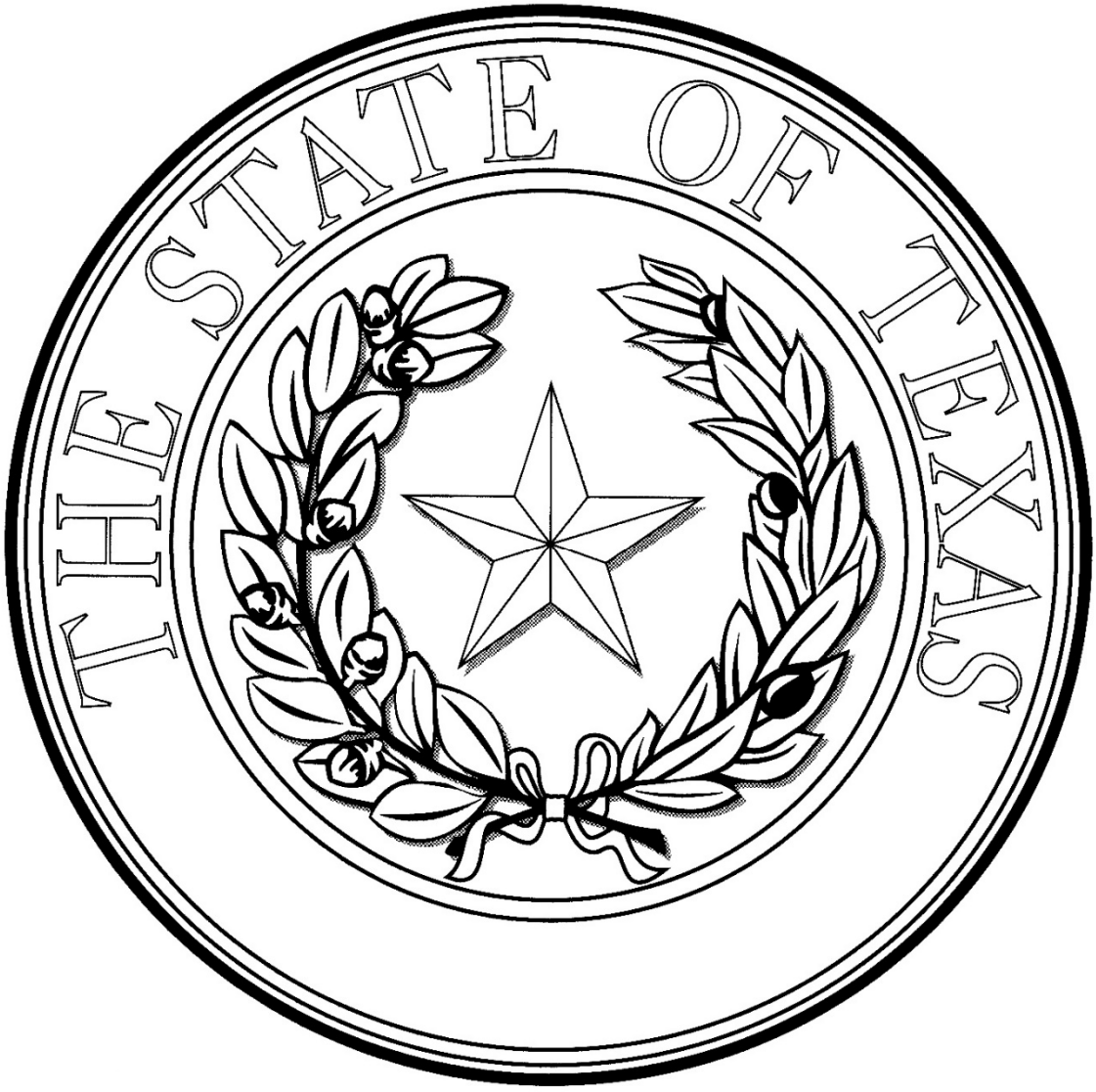
TEXAS REGISTER

Volume 49 Number 26 *June 28, 2024* *Pages 4637 - 4852*



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

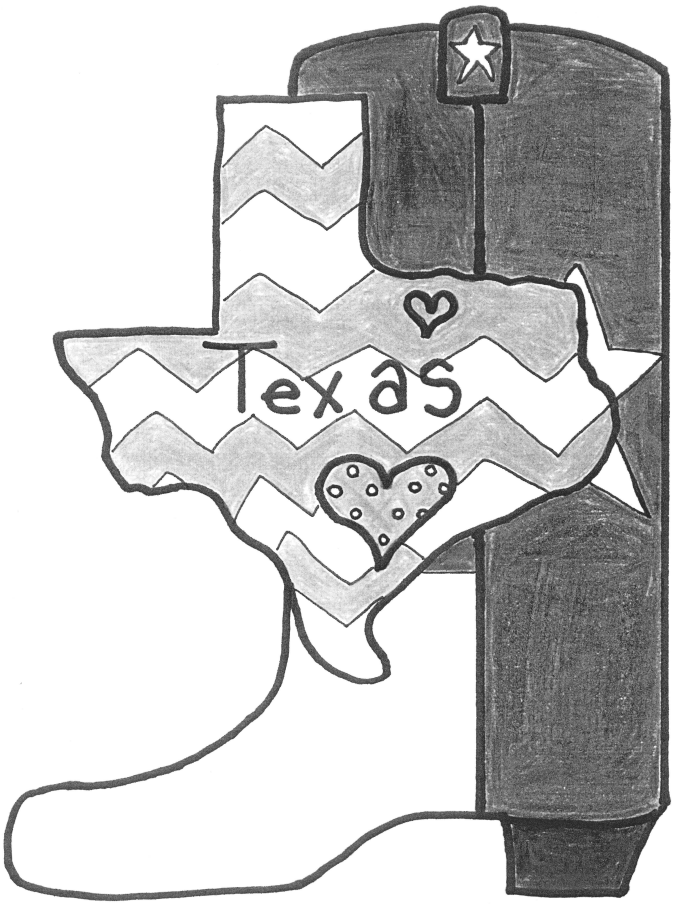
https://www.sos.texas.gov
register@sos.texas.gov

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

In This Issue


Texas

THE GOVERNOR

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

Appointments

Appointments for June 11, 2024

Appointed as Judge of the Third Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Melissa Davis Andrews of Austin, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Judge of the Third Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Patrick K. Sweeten of Austin, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Chief Justice of the Fifteenth Court of Appeals, Place 1, effective September 1, 2024, for a term until December 31, 2026, or until his successor shall be duly elected and qualified, Scott A. Brister of Austin, Texas (pursuant to SB 1045, 88th Legislature, Regular Session).

Appointed as Justice of the Fifteenth Court of Appeals, Place 2, effective September 1, 2024, for a term until December 31, 2026, or until his successor shall be duly elected and qualified, Scott K. Field of Liberty Hill, Texas (pursuant to SB 1045, 88th Legislature, Regular Session).

Appointed as Justice of the Fifteenth Court of Appeals, Place 3, effective September 1, 2024, for a term until December 31, 2026, or until her successor shall be duly elected and qualified, April L. Farris of Sugar Land, Texas (pursuant to SB 1045, 88th Legislature, Regular Session).

Appointments for June 12, 2024

Appointed as Judge of the First Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Andrea K. Bouresa of Murphy, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Judge of the First Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, William G. "Bill" Whitehill of Dallas, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Judge of the Eighth Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Jerry D. Bullard of Colleyville, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Judge of the Eighth Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Brian S. Stagner of Fort Worth, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointments for June 13, 2024

Appointed as Judge of the Fourth Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Marialyn P. Barnard of San Antonio, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Judge of the Fourth Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Stacy R. Sharp of San Antonio, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointments for June 14, 2024

Appointed as Judge of the Eleventh Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Maria "Sofia" Adrogué of Houston, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Appointed as Judge of the Eleventh Business Court Division, effective September 1, 2024, for a term to expire September 1, 2026, Samuel G. "Grant" Dorfman of Bellaire, Texas (pursuant to HB 19, 88th Legislature, Regular Session).

Designated as presiding officer of the Committee to Study the Formation of a Texas Bicentennial Commission for a term to expire at the pleasure of the Governor, John L. Nau, III of Houston, Texas (pursuant to SB 1985, 88th Legislature, Regular Session).

Appointments for June 17, 2024

Appointed to the Public Safety Commission for a term to expire January 1, 2030, Willis D. "Dan" Hord, III of Midland, Texas (replacing Jesse W. "Dale" Wainwright of Austin, whose term expired).

Appointed to the Public Safety Commission for a term to expire January 1, 2030, Steven H. "Steve" Stodghill of Dallas, Texas (Mr. Stodghill is being reappointed).

Greg Abbott, Governor

TRD-202402656

♦ ♦ ♦

Appointments

Appointments for June 18, 2024

Appointed to the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments for a term to expire February 1, 2029, Jennifer M. "Jenn" Gonzalez, Ph.D. of Dallas, Texas (replacing Robert S. "Sean" McCleskey of San Antonio, who resigned).

Greg Abbott, Governor

TRD-202402683

♦ ♦ ♦

Proclamation 41-4118

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Tuesday, April 30, 2024, as amended on Thursday, May 2, 2024, Tuesday, May 7, 2024, Wednesday, May 15, 2024, Monday, May 20, 2024, Sunday, May 26, 2024, Thursday, May 30, 2024, and Wednesday, June 5, 2024, certifying that the severe storms and flooding that began on April 26, 2024, and included heavy rainfall, flash flooding, river flooding, large hail, and

hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Anderson, Angelina, Austin, Bailey, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Bosque, Bowie, Brazos, Brown, Burleson, Burnet, Caldwell, Calhoun, Cass, Chambers, Cherokee, Clay, Coleman, Collin, Colorado, Comal, Concho, Cooke, Coryell, Dallas, Delta, Denton, DeWitt, Dickens, Eastland, Ellis, Falls, Fannin, Fayette, Freestone, Galveston, Gillespie, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Haskell, Hays, Henderson, Hill, Hockley, Hood, Houston, Hunt, Jasper, Jefferson, Johnson, Jones, Karnes, Kaufman, Kendall, Kerr, Kimble, Knox, Lamar, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Lynn, Madison, Mason, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Montague, Montgomery, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Shelby, Smith, Somervell, Sutton, Tarrant, Terrell, Travis, Trinity, Tyler, Van Zandt, Walker, Waller, Washington, Wichita, Williamson, and Wilson Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend the aforementioned proclamation and declare a disaster in the additional counties of Hopkins and Titus.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 13th day of June, 2024.

Greg Abbott, Governor

TRD-202402658

♦ ♦ ♦

Proclamation 41-4119

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Aransas, Atascosa, Bee, Brewster, Brooks, Caldwell, Cameron, Chambers, Coleman, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Shackelford, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of June, 2024.

Greg Abbott, Governor

TRD-202402659

♦ ♦ ♦

Proclamation 41-4120

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Concho, Eastland, Erath, and Gillespie Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Bandera, Bee, Bexar, Blanco, Burnet, Calhoun, Cameron, Colorado, Comal, Comanche, Culberson, Edwards, El Paso, Hays, Hidalgo, Hudspeth, Irion, Jeff Davis, Kendall, Kerr, Kinney, Lavaca, Llano, Lubbock, Matagorda, Maverick, Medina, Presidio, Real, Terrell, Tom Green, Travis, Uvalde, Val Verde, Victoria, Wharton, Willacy, Williamson, Wilson and Zavala Counties.

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

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

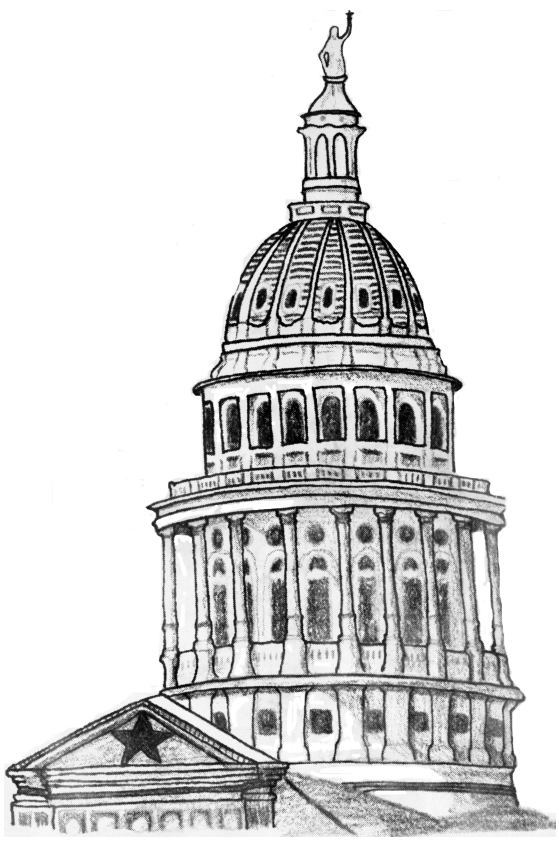
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of June, 2024.

Greg Abbott, Governor

TRD-202402660

♦ ♦ ♦



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: https://www.texasattorneygeneral.gov/attorney-general-opinions.)

Requests for Opinions

RQ-0544-KP

Requestor:

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Whether a taxing unit is entitled to recover attorney's fees pursuant to Property Tax Code section 33.48 in certain circumstances (RQ-0544-KP)

Briefs requested by July 12, 2024

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

TRD-202402671
Justin Gordon
General Counsel
Office of the Attorney General
Filed: June 18, 2024

♦ ♦ ♦

Opinions

Opinion No. KP-0467

Mr. R. Scott Kesner

Chair, Texas Real Estate Commission

Post Office Box 12188

Austin, Texas 78711-2188

Re: Whether a person who negotiates a lease of property for the development of a wind power project on behalf of another, for compensation, is required to hold a license issued by the Texas Real Estate Commission (RQ-0523-KP)

S U M M A R Y

Occupations Code chapter 1101 governs the Texas Real Estate Commission and requires licensure of certain professionals engaged in transactions involving real property, including the negotiation of a lease. Subsection 1101.005(9)(A) excludes transactions involving the lease of mineral or other mining interests in real property from the application of chapter 1101. As commonly defined, wind is not a mineral or mining interest. And no other provision in chapter 1101 expressly excludes transactions involving wind leases. Further, under related Occupations Code chapter 954, governing land services, wind is an "other energy source" and not a "mineral."

For these reasons, a court would likely find that subsection 1101.005(9)(A)'s language "mineral or mining interest" does not include wind such that a person negotiating a lease for property of a wind power project on behalf of another, for compensation, is required to hold a license issued by the Commission.

Opinion No. KP-0468

Mr. Tristan Marquez

Ector County Auditor

1010 East 8th Street, Room 121

Odessa, Texas 79761

Re: The legality of certain actions of the Ector County Utility District Board of Directors (RQ-0524-KP)

S U M M A R Y

Election Code subsection 141.034(a) prohibits a challenge to an application for a place on the ballot as to form, content, and procedure after the fiftieth day before the date of the election for which the application is made. Once that period has passed, any form, content, and procedural insufficiencies in a candidate's application are moot. Thus, a court would likely conclude a person who is elected to office does not unlawfully hold the office as the result of filing a deficient application for a place on the ballot.

Water Code subsection 49.105(a) provides that a vacancy on the board of certain water districts "shall be filled for the unexpired term by appointment of the board not later than the 60th day after the date the vacancy occurs." A court would likely conclude the term "shall" in subsection 49.105(a) is directory in nature.

Local Government Code subsection 178.053(a) authorizes a commissioners court to remove for misconduct the director of a municipal utility district if, among other things, directors of the district are wholly or partially appointed by the commissioners court. Subsection 178.053(a) does not, therefore, apply to a municipal utility district whose directors are elected rather than appointed.

Section 66.001 of the Civil Practice and Remedies Code authorizes an action in quo warranto in certain instances, including when a person unlawfully holds an office or a public officer forfeits his or her office. It imposes no factual threshold which mandates an action in the nature

of quo warranto, but instead lays out the grounds for when the remedy is "available" and gives the Attorney General or a district or county attorney the discretion whether to petition the court.

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

TRD-202402672

Justin Gordon
General Counsel
Office of the Attorney General
Filed: June 18, 2024

♦ ♦ ♦

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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §§1.401 - 1.411

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §§1.401 - 1.411. The purpose of the proposed repeal is to eliminate the outdated rule and replace it simultaneously with a new more germane rule.

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 proposed 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. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: how state and federal requirements are applied to recipients of Department funds.

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

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

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

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

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 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 has evaluated the 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 would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 28, 2024 to July 29, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, July 29, 2024.

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

Except as described herein the repeal affects no other code, article, or statute.

§1.401. Definitions.

§1.402. Cost Principles and Administrative Requirements.

§1.403. Single Audit Requirements.

§1.404. Purchase and Procurement Standards.

§1.405. Bonding Requirements.

§1.406. Fidelity Bond Requirements.

§1.407. Inventory Report.

§1.408. Travel.

§1.409. Records Retention.

§1.410. Determination of Alien Status for Program Beneficiaries.

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

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

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

TRD-202402635
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §§1.401 - 1.411

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, including §§1.401 - 1.411. The purpose of the new section is to reflect changes to federal regulations, make minor procedural revisions, remove the prior process for the Executive Award Review and Advisory Committee (EARAC), add clarification of when this rule is applicable to vendors, and make other applicable changes.

Tex. Gov't Code §2001.0045(b) does not apply to the rule 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. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to updates to existing requirements for recipients of Department funds.

2. The new sections do 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 sections do not require additional future legislative appropriations.

4. The new sections 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 sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new sections will not expand, limit, or repeal an existing regulation.

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

8. The new sections 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 has evaluated the new sections and determined that they 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 new sections do 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 sections as to their possible effects on local economies and has determined that for the first five years the new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held June 28, 2024 to July 29, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, July 29, 2024.

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

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

§1.401. Effective Date and Definitions.

(a) Revisions to this Subchapter reflect updates to 2 CFR Part 180 and 2 CFR Part 200, and are generally effective for Contracts executed on or after October 1, 2024. Previous versions of these rules as memorialized in Contracts will continue to be effective, unless the Contract is amended to add additional funds on or after October 1, 2024, and that amendment specifically incorporates some or all of the provisions in the rule, to the extent federally allowed.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this title that govern the program associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this part.

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

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or $10,000 (except in the case of Contracts subject to TXGMS or UGMS, in which case $5,000).

(4) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

(i) accounting;

(ii) architecture;

(iii) landscape architecture;

(iv) land surveying;

(v) medicine;

(vi) optometry;

(vii) professional engineering;

(viii) real estate appraising;

(ix) professional nursing; or

(x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

(i) a certified public accountant;

(ii) an architect;

(iii) a landscape architect;

(iv) a land surveyor;

(v) a physician, including a surgeon;

(vi) an optometrist;

(vii) a professional engineer;

(viii) a state certified or state licensed real estate appraiser;

(ix) attorney; or

(x) a registered nurse.

(5) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(6) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(7) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, 20, 23, 24, 25 or 26 as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds, a grant made to a unit of government or nonprofit organization, or Affiliate, or TCAP-RF grants or loans when made to a unit of government or nonprofit organization or Affiliate. Except as otherwise noted in this subchapter or by Contract, this definition does not include vendors having been procured by the Department for goods or services. A Subrecipient may also be referred to as Administrator.

(8) Supplies--means tangible personal property other than "Equipment" in this section.

(9) Texas Grant Management Standards (TxGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to TxGMS.

(10) Uniform Grant Management Standards (UGMS)--the standardized set of financial management procedures used by the Department in Contracts that began before January 1, 2022.

§1.402. Cost Principles and Administrative Requirements.

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth as applicable in TxGMS or UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. A Subrecipient that is administering a housing Program under Chapters 24 or 26 of this title, may receive a fixed amount of administrative funds. Private Nonprofit Subrecipients of Emergency Solutions Grant (ESG), HOME Investments Partnership Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Low Income Household Water and Wastewater Program (LIHWAP), Community Service Block Grant (CSBG) discretionary awards to non-eligible entities, and Department of Energy Weatherization Assistance Program (DOE WAP) do not have to comply with TxGMS unless otherwise required by Notice of Funding Availability (NOFA) or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) of this sub-

section that might result in a release of funds without appropriate controls:

(1) Requisition authorization;

(2) Encumbrance into software;

(3) Check creation and/or automated payment disbursement;

(4) Authorized signature/electronic signature; and

(5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for and continue to be implemented through the term of the Contract.

(d) Subrecipient will sign a Contract with the applicable Assurances in Appendix 6 of TxGMS as required by and in the form and substance acceptable to the Department's Legal Division.

§1.403. Single Audit Requirements.

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend $1,000,000 or more (or in the case of entities subject to TXGMS or UGMS of $750,000 or more) in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of $1,000,000 or more (or in the case of entities subject to TXMGS or UGMS of $750,000 or more) with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 calendar days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR Part 200, subpart F, the report must be submitted to the Department the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of its respective fiscal year. If the deadline is on a Saturday, Sunday, federal holiday (for a Single Audit required to be submitted to the Federal Audit Clearinghouse), or a state holiday (for a Single Audit required to be submitted to the Department), the deadline is the next business day.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be entered into with the Department in accordance with 10 TAC §1.21 (relating to Action by Department if Outstanding Balances Exist).

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to the Executive Director during the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with §1.411 of this Chapter (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code), or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subsection (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit

and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to the Executive Director.

§1.404. Purchase and Procurement Standards.

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200, UGMS, and TxGMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) - (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

(1) rationale for the type of procurement,

(2) cost or price analysis,

(3) procurement package,

(4) advertising,

(5) responses,

(6) selection process,

(7) contractor selection or rejection,

(8) certification of conflict of interest requirements being satisfied, and

(9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department. Subrecipient must present written justification for the needed vehicle. If approved such approval will be provided via written correspondence from the Department. Procurement procedures must include provisions for full and open competition and a comparison of the costs associated with leasing versus buying a vehicle. Any vehicle purchased without approval may result in disallowed costs.

(g) For procurement transactions not subject to UGMS or TxGMS, the Department has adopted a $10,000 micropurchase and $250,000 simplified acquisition threshold. For procurement transactions subject to UGMS or TxGMS, Subrecipient must follow a $3,000 micropurchase threshold and a $250,000 Texas Acquisition Threshold (which is currently tied to the federal simplified acquisition threshold). If the federal simplified acquisition threshold changes, as a result of 2 CFR §200.88, or if it is temporarily raised because of a federal disaster declaration, the Department will publish the new amount on its website.

§1.405. Bonding Requirements.

(a) The requirements described in this subsection relate to construction or facility improvements in DOE WAP, HOME, HOME-ARP, CDBG, NSP, HHSP, EH Fund, TCAP-RF, and ESG Subrecipients, or other fund source required by state or federal law or regulation to have bonding for construction or facility improvements.

(1) For construction contracts exceeding $100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of $100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that upon acceptance of the bid, the bidder will execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements contained in Texas statutes, including but not limited to Tex. Gov't Code ch. 2253 and Tex. Local Gov't Code §252.044, §262.032, or §392.0525, as applicable.

§1.406. Fidelity Bond Requirements.

The Department is required to assure that fiscal control and accounting procedures for federally funded entities will be established to assure the proper disbursal and accounting for the federal funds paid to the state. In compliance with that assurance the Department requires program Subrecipients to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust.

(1) In administering Contracts, Subrecipients shall observe their regular requirements and practices with respect to bonding and insurance. In addition, the Department may impose bonding and insurance requirements by Contract.

(2) If a Subrecipient is a non-governmental organization, the Department requires an adequate fidelity bond. If the amount of the fidelity bond is not prescribed in the contract, the fidelity bond must be for a minimum of 5% of the Contract amount. The bond must be obtained from a company holding a certificate of authority to issue such bonds in the State of Texas.

(3) The fidelity bond coverage must include all persons authorized to sign or counter-sign checks or to disburse sizable amounts of cash. Persons who handle only petty cash (amounts of less than $250) need not be bonded, nor is it necessary to bond officials who are authorized to sign payment vouchers, but are not authorized to sign or counter-sign checks or to disburse cash.

(4) The Subrecipient must receive an assurance letter from the bonding company or agency stating the type of bond, the amount and period of coverage, the positions covered, and the annual cost of the bond. Compliance must be continuously maintained thereafter. A copy of the actual policy shall remain on file with the Subrecipient and shall be subject to monitoring by the Department.

(5) Subrecipients are responsible for filing claims against the fidelity bond when a covered loss is discovered.

(6) The Department may take any one or more of the actions described in Chapter 2, of this title, relating to Enforcement in association with issues identified as part of filing claims against the fidelity bond.

§1.407. Inventory Report.

(a) The Department requires the submission of an inventory report for all Contracts to be submitted to the Department, no later than 45 calendar days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract Term.

(c) Aggregate Supplies of over $10,000 (except in the case of Contracts subject to TXGMS or UGMS, in which case this limit is $5,000), must be reported to the Department at the end of the Contract Term using federal form SF-428, which is a standard form to collect information related to tangible personal property or other form required by the federal fund source.

(d) For certain public facility activities funded by the Community Development Block Grant, inventory requirements will be those required by HUD for real property, as further identified in the Contract.

§1.408. Travel.

The governing body of each Subrecipient must adopt and implement for the term of the Contract travel policies that adhere to 2 CFR Part 200, for cost allowability. The Subrecipient must follow either the federal travel regulations or State of Texas travel rules and regulations found on the Comptroller of Public Accounts website at www.cpa.state.tx.us, as applicable.

§1.409. Records Retention.

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have Direct Loan or HOME-ARP Funds or grants, or 811 PRA assistance. The Department requires Subrecipient organizations, and any entities who perform services and assistance on their behalf, to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five years starting from the date the household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this title.

§1.410. Determination of Alien Status for Program Beneficiaries.

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(4) State--The State of Texas or the Department, as indicated by context.

(5) Subrecipient--An entity that receives federal or state funds passed through the Department. The definition does apply to a vendor having been procured by the Department to determine eligibility for federal or state funds and as otherwise reflected in the Contract.

(6) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further described in this rule.

(d) Applicability for State Funds. The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization or acting on behalf of a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Home Energy Assistance Program, Low Income Household Water and Wastewater Program, and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. For existing Subrecipients, an election made under this subsection does not need to be restated annually, but will continue from the election made in the prior year unless the Subrecipient notifies the Department otherwise in writing before the deadline. For new Subrecipients, if the election must be made with the Application or if there is no Application before Contract execution. If the existing Subrecipient does not notify the Department of the election in writing by the deadline but refuses to abide by its election the Subrecipient will not be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the Subrecipient to select an option by the deadline is good cause for nonrenewal or termination of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this title.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe a Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the Subrecipient. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

(h) A Subrecipient must establish that an individual is a U.S. Citizen, U.S. National, or Qualified Alien using the documents deemed acceptable by the Department, and which have been published on the Department's website. This information may be updated by the Department from time to time, and highly encourages Subrecipients or other concerned parties to contact the Department if revisions are suggested.

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

(a) Purpose. The purpose of this section is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant (CSBG) funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program (LIHEAP) funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant (CDBG) Program. If additional block grant funds that would be subject

to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than $5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Requests for Reconsideration. Subrecipient must establish written procedures for the handling of denials of service when the denial involves a household inquiring or applying for services/assistance. This procedure must include, at a minimum:

(1) A written denial of assistance notice being provided to the affected person within 10 calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the written policy. This notification shall include written notice of the right of a hearing or secondary review of income documentation, as applicable, the timeframe the affected person has to respond to the decision, and specific reasons for the denial of assistance. The Subrecipient may adopt a policy limiting the time period during which a request for a hearing will be accepted and the format for the request, but the Subrecipient must provide the affected person with at least 10 calendar days to request a hearing or secondary review.

(2) If requested by the affected person, Subrecipient shall hold a private, recorded hearing (unless otherwise required by law) either virtually, by phone, or in person in an accessible location within 15 calendar days after the Subrecipient received the hearing request from the affected person and must provide the affected person notice in writing of the time/location of the hearing at least seven calendar days before the hearing.

(3) The hearing shall allow time for a statement by the Subrecipient's staff with knowledge of the case.

(4) The hearing shall allow the affected person at least equal time, if requested, to present relevant information contesting the decision.

(5) If a denial is based solely on income eligibility, the provisions described in paragraphs (2) - (4) of this subsection do not apply, however the affected person may request a secondary review of income eligibility based on initial documentation provided at the time of the original request for assistance. Such a secondary review must include an analysis of the initial calculation based on the documentation received with the initial request for services and will be performed by an individual other than the person who performed the initial determination. If the secondary review upholds the denial based on income eligibility documents provided at the initial request, the affected person must be notified in writing.

(6) If the affected person is not satisfied with the Subrecipient's determination at a hearing or as concluded based on a secondary income eligibility review, the affected person may request a subsequent review of the decision by the Department if the affected person requests a further review in writing within 10 calendar days of notification of an adverse decision. If applicable, Subrecipient's should hold funds aside in the amount needed to provide the services requested by the affected person until the Department completes its decision.

(7) Affected persons, after having followed the steps in paragraphs (1) - (6) of this subsection, who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(8) The hearing under paragraph (7) of this subsection shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13 of this title (relating to Contested Case Hearing Procedures).

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of $10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecipient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status; or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th calendar day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in paragraph (1) of this subsection or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).

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

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

TRD-202402637
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.6

The Texas Department of Housing and Community Affairs (the Department) proposes amending 10 TAC Chapter 8, Project Rental Assistance Program Rule, §8.6, Program Regulations and Requirements. The amendments will ensure the rule accurately reflects current Department processes that have been updated over time.

FISCAL NOTE. Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

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

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed rule action would be in effect, the proposed actions do not create or eliminate a government program, but relate to changes to an existing activity, processes associated with the 811 PRA Program.

2. The proposed amendment to the rule will not require a change in the number of employees of the Department;

3. The proposed amendment to the rule will not require additional future legislative appropriations;

4. The proposed amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;

5. The proposed amendment to the rule will not create a new regulation, but merely revises a regulation to reference a new inspection protocol;

6. The proposed amendment to the rule will not repeal an existing regulation;

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

8. The proposed amendment to the rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be the clarification of what inspection method may be used and what the cut-off score would be for the NSPIRE inspection. There will not be any economic cost to any individual required to comply with the amendment.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this action may be submitted in writing from June 28, 2024 to July 28, 2024. Written comments may be submitted to the Texas Department of Housing and Community Affairs to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. Austin local (Central) time, July 28, 2024.

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

Except as described herein the proposed amendment affects no other code, article, or statute.

§8.6. Program Regulations and Requirements.

(a) Participation in the 811 PRA Program is encouraged and may be incentivized through the Department's Rules and NOFAs. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System;

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing;

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents, as revised by FHEO-2023-01, Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act 2022 (VAWA); [~~or~~]

(7) H 2022-01, Carbon Monoxide Alarms or Detectors in U.S. Housing and Urban Development (HUD) -Assisted Housing;

(8) H 2023-10, Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA); and

(9) [~~(7)~~] H 2013-24, Section 811 Project Rental Assistance (PRA) Occupancy Interim Notice.

(e) Use Agreements. The Owner must execute the Use Agreement at the execution of the RAC and comply with the following:

(1) Use Agreement must be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to the Department within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) The Department will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) TRACS & EIV, Reporting, Tenant Certifications and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate methods to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) EIV Policies and Procedures. Upon the execution of a RAC, the Owner must submit a copy of the property's EIV Policies and Procedures to the Department for review. If deficiencies are identified, the Owner will be required to correct and resubmit to the Department until all deficiencies have been properly corrected.

(3) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by the Department, but is still required to satisfy the Program Requirements.

(4) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(5) Compliance Reviews. The Department's Compliance Division will conduct a monitoring review in conjunction with the review of any other Department administered housing program layered with the Development. If the Development is layered with Housing Tax Credits and has exceeded the 15-year Federal Compliance Period, monitoring reviews of the Program will still be conducted at least every three years.

(6) The Department will review the Property's Tenant Selection Plan and Criteria, as defined by and in accordance with §10.802 of this chapter (relating to Written Policies and Procedures).

(g) Tenant Selection and Screening.

(1) Target Population. The Department will screen Eligible Applicants for compliance with the Department's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for the Department's Program. The Target Population may be revised, with HUD approval.

[~~(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with §10.8 of this chapter, to the Department for approval.~~]

(2) [~~(3)~~] Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from the Department and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and the Department in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and the Department in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income, Assets, and Deductions. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System per HUD Handbook 4350.3 and HUD Notices. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. Use of the EIV system as third party verification is not acceptable for the Housing Tax Credit or Multifamily Direct Loan Program.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by the Department, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by the Department, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. The Department will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. The Department will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) The Department will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the Development, the Department may begin a RAC amendment to reduce the number of Assisted Units. An Owner who has an amended, executed RAC must continue to notify the Department of units that become vacant that are committed under the Agreement.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of the Department. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. The Department will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to the Department 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the Department approved Utility Allowance used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify the Department if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although the Department has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in §10.406 of this title (relating to Ownership Transfers (§2306.6713)).

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. The Department and its service partners are responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, the Department may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify the Department of renewals of leases with Eligible Families and any changes to the terms of the lease.

(5) Development Policies. Upon the execution of the RAC, an Owner is required to submit a copy of the Development Policies (House Rules) to the Department for review. If deficiencies are noted, the Development will be required to correct and resubmit to the Department until all deficiencies have been properly corrected. The Owner is required to send a copy of amendments to the House Rules to the Department before implementing changes.

(k) Rent.

(1) Tenant Rent Payment.[:] The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3 and HUD Notices, and is responsible for collecting the Tenant Rent payment.

(2) Utility Reimbursement. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment no later than the 5th day of each month, beginning 30 days after initial move in.

(3) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent, in accordance with HUD Handbook 4350.3.

(4) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If a Unit at the Development has a Department enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum Department enforced rent restriction for that Unit, not to exceed the 60% Area Median Family Income limit.

(B) If there is no existing Department enforced rent restriction on the Unit, or the existing Department enforced rent restriction is higher than FMR, the Department will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with the Department, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by the Department.

(D) After the signing of the original RAC, upon request from the Owner to the Department, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Household Changes; Transfers; Eviction.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify the Department of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of a newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify the Department no later than 180 days before the Eligible Multifamily Property will be available for initial move-in. Failure to reserve the agreed upon number of Assisted Units for Eligible Families will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for Debarment.

(4) Vacancy. Upon execution of the RAC, the Owner must notify the Department of any vacancy of an Assisted Unit at the Eligible Multifamily Property as soon as possible, not to exceed seven calendar days from when the Owner becomes aware of the eligible Unit availability. Once the Department acknowledges receipt of the notice, the Department will notify the Owner within three business days if the Unit is acceptable and submit a referral. If the qualifying Eligible Tenant vacates the Assisted Unit, the Department will determine if the remaining family member(s) is eligible for continued assistance from the Program.

(5) Vacancy Payment. The Department may provide vacancy payments that cannot exceed 80% of the Contract Rent for up to 60 days from the effective date of the RAC. After the 60 days, the Owner may lease the Assisted Unit to a non-Eligible Tenant. Developments without an executed RAC are not eligible for vacancy payments.

(6) Household Changes. Owner will notify the Department of any changes in family composition in an Assisted Unit within three business days. If the change results in the Assisted Unit being smaller or larger than is appropriate for the Eligible Family size, the Owner must refer to the Department's written policies regarding family size, unit transfers and waitlist management. If the Department discovers the Eligible Family is ineligible for the size of the Assisted Unit, the Owner will be notified but Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(7) Transfers. Owner must notify the Department if the Eligible Family requests a transfer to another Assisted Unit within the Development. The Department will determine if the Eligible Family qualifies for the unit transfer, if the new Unit is eligible as an Assisted Unit and then notify the Owner. If the Department determines the Eligible Family is ineligible for the size of the Assisted Unit, the Department will notify the Owner and Rental Assistance Payments will not be reduced or terminated until the Eligible Family can be transferred to an appropriate sized Assisted Unit.

(8) Notice to Vacate and Nonrenewal. Owners are required to notify the Department at least three calendar days prior to issuing a Notice to Vacate or a Notice of Non-Renewal to the Eligible Family. Notices must be compliance with HUD Handbook 4350.3 8-13(B)(2) and HUD Notices. A copy of the applicable Notice must be submitted via email to 811info@tdhca.state.tx.us.

(A) Owner is required to notify the Department within seven calendar days of when the Development is notified that the Eligible Family will vacate or in the event that the Eligible Family vacates without notice, upon discovery that the Assisted Unit is vacant. Notification of vacancy must be submitted to 811info@tdhca.state.tx.us.

(B) Upon move out, Owner must submit a move out disposition to the Department to ensure proper processing of the security deposit per HUD Handbook 4350.3 6-18.

(m) Construction Standards, Inspections, Repair and Maintenance, and Accessibility.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to National Standards for the Physical Standards of Real Estate (NSPIRE) [~~Uniform Physical Conditions Standards (UPCS)~~] which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily

Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and Department requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property meets or exceeds the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is required to train all property management staff engaging with Eligible Families on the requirements of the Program. Owner training must include, but is not limited to the HUD Handbook 4350.3 and the Department's webpage at https://www.tdhca.state.tx.us/section-811-pra/index.htm.

(o) Reporting Requirements. Owner shall submit to the Department such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by the Department. Owner shall provide the Department with all reports necessary for the Department's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with §11.305 of this title (relating to complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, in-

cluding but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Equal Opportunity, Fair Housing, Nondiscrimination, and Equal Access.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by the Department in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under §1.24 of this title (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164).

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The

relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and the Owner, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage the Department in an ADR procedure, the Owner may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR policy, see the Department's Alternative Dispute Resolution and Negotiated Rulemaking at §1.17 of this title (relating to Alternative Dispute Resolution).

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

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

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

TRD-202402638
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.74, §1.81

The Texas State Library and Archives Commission (commission) proposes amendments to Title 13, Chapter 1, §1.74. Local Operating Expenditures, and §1.81. Quantitative Standards for Accreditation of Library.

BACKGROUND. Government Code, Chapter 441, Subchapter I, Library Systems, authorizes the commission to establish criteria a library must meet for accreditation. The commission adopted these accreditation standards at 13 Texas Administrative Code Chapter 1, Subchapter C, Minimum Standards for Accreditation of Libraries in the State Library System, §§1.71 - 1.87. These rules set forth in detail the requirements for any library seeking accreditation. Accreditation is not a requirement for public libraries in Texas. However, accredited libraries are eligible to participate in statewide interlibrary loan (ILL), apply for E-rate (a federal telecommunications discount program) and a variety of funding opportunities offered by the commission throughout the year, and take advantage of the TexShare Card and TexShare Databases programs through membership in the TexShare Consortium.

The commission has been reviewing the accreditation rules for necessary updates and improvements since May 2023. In addition, the Library Systems Act Advisory Board considered the rules and needed updates on March 14, 2024, and commission staff hosted a series of eight sessions to review and discuss the proposed revisions, with nearly 380 librarians attending from all over the state.

The current accreditation rules require a demonstration of specified levels of local effort related to local operating expenditures by fiscal year and actual local expenditures by fiscal year that vary depending on the population served by the library. The current rules do not include a fiscal year beyond local fiscal year (FY) 2024. Public libraries must gather and report the required information during the months preceding the stated fiscal year. Therefore, because the current rules do not address FY 2025 or beyond, public libraries may face uncertainty during the planning process.

The commission intends to consider proposed amendments to the rules at its August or November commission meeting. However, any changes proposed at these meetings would not become final until well after the start of FY 2025. Therefore, the commission finds it necessary to amend the current rules to include FY 2025, thereby maintaining the status quo until such time as the commission finally adopts needed amendments to the rules.

EXPLANATION OF PROPOSED AMENDMENTS. An amendment to §1.74, Local Operating Expenditures, would add FY 2025 to subsection (b), requiring a public library applying for accreditation to have minimum total local expenditures of $21,000 in local fiscal year 2025. This requirement would be the same as FY 2024.

Amendments to §1.81, Quantitative Standards for Accreditation of Library, would add FY 2025 to each subparagraph establishing the local expenditure requirements for the library. The amendment would keep the requirement for FY 2025 the same as FY 2024.

FISCAL IMPACT. Sarah Karnes, Division Director, Library Development and Networking Division, has determined that for each of the first five years the proposed amendments are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering these amended rules, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Karnes has determined that for each of the first five years the proposed amendments are in effect, the anticipated public benefit will be the continued accreditation of public libraries based on current accreditation criteria, ensuring that libraries maintain financial sustainability as the commission continues to move toward updating the accreditation rules overall.

There are no anticipated economic costs to persons required to comply with the proposed amendments.

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the rules as proposed for amendment will be in effect, the commission has determined the following:

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

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

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

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

5. The proposal will not create new regulations;

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

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

8. The proposal will not positively or adversely affect the state's economy.

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

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

STATUTORY AUTHORITY. The amendments are proposed under Government Code, §441.135, which authorizes the commission to adopt guidelines for the awarding of grants; §441.136, which authorizes the commission to adopt rules necessary to the administration of the program of state grants, including qualifications for major resource system membership; §441.127, which provides that to be eligible for membership in a major resource system or regional library system, a library must meet the accreditation standards established by the commission; and §441.122(1) and (2), which defines "accreditation of libraries" as the evaluation and rating of libraries according to commission accreditation standards and "accreditation standards" as the criteria established by the commission that a library must meet to be accredited and eligible for membership in a major resource system.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§1.74. Local Operating Expenditures.

(a) A public library must demonstrate local effort on an annual basis by maintaining or increasing local operating expenditures or per capita local operating expenditures. Expenditures for the current reporting year will be compared to the average of the total local operating expenditures or to the average of the total per capita local operating expenditures for the three preceding years.

(b) A public library must have minimum total local expenditures of $10,650 in local fiscal years 2013, 2014, 2015; $15,000 in local fiscal years 2016, 2017, 2018; $18,000 in local fiscal years 2019, 2020, 2021; and $21,000 in local fiscal years 2022, 2023, 2024, and 2025.

(c) Exemption: Libraries that expend at least $17.50 per capita and at least $150,000 of local funds are exempt from this membership criterion.

§1.81. Quantitative Standards for Accreditation of Library.

(a) The definition of "local fiscal year" is the fiscal year in which January 1 of that year falls.

(b) The following are the minimum requirements for membership in the state library system:

(1) A library serving a population of at least 500,001 persons must:

(A) have local expenditures amounting to at least $13.82 per capita in local fiscal years 2013, 2014, 2015; $13.89 per capita in local fiscal years 2016, 2017, 2018; $13.96 per capita in local fiscal years 2019, 2020, 2021; $14.03 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 64 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ twelve full-time equivalent professional librarians, with one additional full-time equivalent professional librarian for every 50,000 persons above 500,000.

(2) A library serving a population of 200,001 - 500,000 persons must:

(A) have local expenditures amounting to at least $11.95 per capita in local fiscal years 2013, 2014, 2015; $12.01 per capita in local fiscal years 2016, 2017, 2018; $12.07 per capita in local fiscal years 2019, 2020, 2021; $12.13 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 64 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ six full-time equivalent professional librarians, with one additional full-time equivalent professional librarian for every 50,000 persons above 200,000.

(3) A library serving a population of 100,001 - 200,000 persons must:

(A) have local expenditures amounting to at least $9.60 per capita in local fiscal years 2013, 2014, 2015; $9.79 per capita in local fiscal years 2016, 2017, 2018; $9.98 per capita in local fiscal years 2019, 2020, 2021; $10.18 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 54 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ four full-time equivalent professional librarians, with one additional full-time equivalent professional librarian for each 50,000 persons above 100,000.

(4) A library serving a population of 50,001 - 100,000 persons must:

(A) have local expenditures amounting to at least $8.00 per capita in local fiscal years 2013, 2014, 2015; $8.16 per capita in local fiscal years 2016, 2017, 2018; $8.32 per capita in local fiscal years 2019, 2020, 2021; at least $8.48 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 48 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ at least two full-time equivalent professional librarians.

(5) A library serving a population of 25,001 - 50,000 persons must:

(A) have local expenditures of at least $5.31 per capita in local fiscal years 2013, 2014, 2015; $5.42 per capita in local fiscal years 2016, 2017, 2018; $5.52 per capita in local fiscal years 2019, 2020, 2021; $5.63 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 40 hours per week;

(E) employ a library director for at least 40 hours per week in library duties; and

(F) employ at least one full-time equivalent professional librarian.

(6) A library serving a population of 10,001 - 25,000 persons must:

(A) have local expenditures of at least $4.25 per capita in local fiscal years 2013, 2014, 2015; $4.34 per capita in local fiscal years 2016, 2017, 2018; $4.42 per capita in local fiscal years 2019, 2020, 2021; $4.51 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 30 hours per week; and

(E) employ a library director for at least 30 hours per week in library duties.

(7) A library serving a population of 5,001-10,000 must:

(A) have local expenditures of at least $3.97 per capita in local fiscal years 2013, 2014, 2015; $4.05 per capita in local fiscal years 2016, 2017, 2018; $4.13 per capita in local fiscal years 2019, 2020, 2021; $4.21 per capita in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials; provided that in either case a minimum of 7,500 items are held;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 20 hours per week; and

(E) employ a library director for at least 20 hours per week in library duties.

(8) A library serving a population of 5,000 or fewer persons must:

(A) have local per capita expenditures or minimum total local expenditures, whichever is greater, of $3.70 per capita or $10,650 in local fiscal years 2013, 2014, 2015; $3.77 per capita or $15,000 total in local fiscal years 2016, 2017, 2018; $3.85 per capita or $18,000 total in local fiscal years 2019, 2020, 2021; $3.92 per capita or $21,000 in local fiscal years 2022, 2023, 2024, and 2025;

(B) have at least one item of library materials per capita or expend at least 15% of the local expenditures on the purchase of library materials, provided that in either case a minimum of 7,500 items are held;

(C) have at least 1% of total items in collection published in the last five years;

(D) be open for service not less than 20 hours per week; and

(E) employ a library director for at least 20 hours per week in library duties.

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

Filed with the Office of the Secretary of State on June 11, 2024.

TRD-202402558
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 463-5460

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §22.123, relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission; §22.181, relating to Dismissal of a Proceeding; and §22.262, relating to Commission Action After a Proposal for Decision.

The proposed amendments to §22.123 clarify that appeals for evidentiary rulings are prohibited and replacing service for an appeal or motion of reconsideration from facsimile transmission to service by electronic mail. The proposed amendments to §22.123 also increase the time period before an appeal or motion for reconsideration is denied if not placed on an open meeting agenda from ten days to 20 days.

The proposed amendments to §22.181 specify that the 20-day default timeline to respond to a motion to dismiss may be revised by the presiding officer and add failure to prosecute or failure to amend an application as grounds for an administrative law judge to dismiss a proceeding without issuing a proposal for decision. The proposed amendments also clarify that an order from an administrative law judge dismissing a proceeding under the revised provisions is a final order of the commission and is subject to motions for rehearing under §22.264 of this title, relating to Rehearing, and clarifies the authority of the presiding officer to grant a request to withdraw an application in certain instances.

The proposed amendments to §22.262 specify that a request for oral argument must be filed no later than seven days - as opposed to seven working days - before the open meeting at which the commission is scheduled to consider the case, and that two days prior to an open meeting, the Office of Policy and Docket Management will file a notice to the parties regarding whether the request for oral argument has been granted.

The proposed amendments also revise all instances of "Policy Development Division" to properly refer to the "Office of Policy and Docket Management" in each rule as well as make minor and conforming changes consistent with the commission"s current drafting practices.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rules will expand, limit, or repeal an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

David Hrncir, Assistant Commission Counsel, Office of Policy and Docket Management has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Hrncir has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhancing the efficiency of processing commission dockets. There will not be any probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by July 25, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission"s website. Comments must be filed by July 25, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56705.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

SUBCHAPTER G. PREHEARING PROCEEDINGS

16 TAC §22.123

Statutory Authority

The amendments are proposed 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, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission shall adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

§22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.

(a) Appeal of an interim order.

(1) Availability of appeal. Appeals are available for any interim order of the presiding officer that immediately prejudices a substantial or material right of a party[,] or materially affects the course of the hearing. Appeals are not available for[, ~~other than~~] evidentiary rulings. Interim orders are not [~~shall not be~~] subject to exceptions or motions [~~application~~] for rehearing [~~prior to issuance of a proposal for decision~~].

(2) Procedure for appeal. If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer must [~~shall~~] so indicate on the record at the time of the oral ruling and must [~~shall~~] promptly issue the written order. Any appeal to the commission from an interim order must [~~shall~~] be filed within ten days of the issuance of the written order or the appealable oral ruling when no written order is to be issued. The appeal must [~~shall~~] be served on all parties by hand delivery, electronic mail [~~facsimile transmission~~], or by overnight courier delivery.

(3) Contents. An appeal must [~~shall~~] specify the reasons why the interim order is unjustified or[,] improper and how it[, ~~or~~] immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.

(4) Responses. Any response to an appeal must [~~shall~~] be filed within five working days of the filing of the appeal.

(5) Motion for stay. Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay must [~~shall~~] specify the basis for a stay. Good cause must [~~shall~~] be shown for granting a stay. The mere filing of an appeal does [~~shall~~] not stay the interim order or any applicable [~~the~~] procedural schedule.

(6) Agenda ballot. Upon the filing of an appeal, the Office of Policy and Docket Management must [~~Policy Development Division shall~~] send a separate ballot [~~ballots~~] to each commissioner to determine whether the commission [~~they~~] will consider the appeal at an open meeting. Untimely motions will not be balloted. The Office of Policy and Docket Management must [~~The Policy Development Division shall~~] notify the parties [~~by letter~~] whether a commissioner by individual ballot has added the appeal to an open meeting agenda[,] but will not identify the requesting commissioner or commissioners [~~commissioner(s)~~].

(7) Denial or granting of appeal.

(A) If [~~after ten days of the filing of an appeal,~~] no commissioner has[, ~~by agenda ballot,~~] placed an [~~the~~] appeal on the agenda of an open meeting by agenda ballot within 20 days after the filing of an appeal, the appeal is deemed denied.

(B) If any commissioner has voted by agenda ballot [~~balloted~~] in favor of considering the appeal, the appeal will [~~it shall~~] be placed on the agenda of the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. If [~~In the event~~] two or more commissioners vote to consider the appeal, but differ as to the date the appeal shall be heard, the appeal must [~~shall~~] be placed on the latest of the dates specified by the ballots.

[~~The time for ruling on the appeal shall expire three days after the date of the meeting, unless extended by action of the commission.~~]

(8) Reconsideration of appeal by presiding officer. The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal before [~~prior to~~] a commission decision on the appeal. The presiding officer must [~~shall~~] notify the commission of its decision to treat the appeal as a motion for reconsideration.

(b) Motion for reconsideration of interim order issued by the commission.

(1) Availability of motion for reconsideration. Motions for reconsideration are available for any interim order of the commission that immediately prejudices a substantial or material right of a party[~~,~~] or materially affects the course of the hearing. Motions for reconsideration may only be filed by a party to the proceeding and are not available for[~~, other than~~] evidentiary rulings. Interim orders are [~~shall~~] not [~~be~~]subject to exceptions [~~prior to issuance of a proposal for decision~~] or motions for rehearing [~~prior to the issuance of a final order~~].

(2) Procedure for motion for reconsideration. If the commission does not intend to reduce an oral ruling to a written order, the commission will [~~shall~~] so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission must [~~shall~~] be filed within five workings days of the issuance of the written interim order or the oral interim ruling. The motion for reconsideration must [~~shall~~] be served on all parties by [~~hand~~] delivery, electronic mail [~~facsimile transmission~~], or by overnight courier delivery.

(3) Content. A motion for reconsideration must [~~shall~~] specify the reasons why the interim order is unjustified or improper.

(4) Responses. Any response to a motion for reconsideration must [~~shall~~] be filed within five [~~three~~] working days of the filing of the motion.

(5) Agenda ballot. Upon the filing of a motion for reconsideration, the Office of Policy and Docket Management must [~~Policy Development Division shall~~] send a separate ballot to each commissioner to determine whether the commission [~~they~~] will consider the motion at an open meeting. The Office of Policy and Docket Management must [~~Policy Development Division shall~~] notify the parties [~~by letter~~] whether a commissioner by individual ballot has added the motion to an open meeting agenda[~~,~~] but will not identify the requesting commissioner or commissioners [~~commissioner(s)~~].

(6) Denial or granting of motion.

(A) If [~~after five working days of the filing of a motion~~] no commissioner has[~~, by agenda ballot,~~] placed a[~~the~~] motion for reconsideration on the agenda for an open meeting by agenda ballot within 20 days after the filing of the motion, the motion is deemed denied.

(B) If any commissioner has voted by agenda ballot [~~balloted~~] in favor of considering the motion, the motion will [~~it shall~~] be placed on the agenda for the next regularly scheduled open meeting or such other meeting as the commissioner may direct by the agenda ballot. If [~~In the event~~] two or more commissioners vote to consider the motion, but differ as to the date the motion shall be heard, the motion must [~~shall~~] be placed on the latest of the dates specified by the ballots. [~~The time for ruling on the motion shall expire three days after the open meeting, unless extended by action of the commission.~~]

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

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

TRD-202402610
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §22.181

Statutory Authority

The amendments are proposed 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, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission shall adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

§22.181. Dismissal of a Proceeding.

(a) - (d) (No change.)

(e) Motion for dismissal, responses, and replies. Dismissal of a proceeding or one or more issues within a proceeding may be made upon the motion of the presiding officer or the motion of any party.

(1) A party's motion for dismissal must specify at least one of the grounds for dismissal identified in subsection (d) of this section. The motion must include a statement that explains the basis for the dismissal and if necessary:

(A) - (B) (No change.)

(2) A presiding officer's motion must [~~shall~~] be provided by written order or stated in the record and must specify one or more grounds for dismissal identified in subsection (d) of this section and a clear and concise statement of the material facts supporting the dismissal.

(3) The party that initiated the proceeding and [~~or~~] any other [~~affected~~] party has [~~shall have~~] 20 days from the date of receipt to respond to a motion to dismiss unless the presiding officer specifies otherwise. The response must contain a statement of reasons the party contends the motion to dismiss should not be granted, and if necessary

(A) - (B) (No change.)

(4) (No change.)

(f) Action on a motion to dismiss. Action on a motion to dismiss must [~~shall~~] conform to this subsection.

(1) If a hearing on the motion to dismiss is held, that hearing must [~~shall~~] be confined to the issues raised by the motion to dismiss.

(2) If the administrative law judge determines that all issues within a proceeding should be dismissed, the administrative law

judge must prepare a proposal for decision in accordance with §22.261 of this title (relating to Proposals for Decision) to that effect, unless the reason for dismissal is solely one of the following:

(A) the withdrawal of an application under subsection (g)(1), [~~or~~] (2), or (3) of this section; or

(B) either failure to prosecute under subsection (d)(6) of this section or failure to amend an application under subsection (d)(7) of this section, or both, and the dismissal is without prejudice.

(3) For dismissal under paragraphs (2)(A) and (2)(B) of this subsection,[~~in which case~~] the administrative law judge may issue an order dismissing the proceeding. An order issued under this paragraph is a final order of the commission and is subject to motions for rehearing under §22.264 of this title (relating to Rehearing).

(4) The commission will [~~shall~~] consider a [~~the~~] proposal for decision recommending [~~or motion for rehearing on an order of~~] dismissal as soon as is practicable.

(5) [~~(3)~~] If the commission determines that all issues within a proceeding should be dismissed, the commission will issue an order subject to motions for rehearing under §22.264 of this title [~~(relating to Rehearing)~~].

(6) [~~(4)~~] If the administrative law judge determines that one or more, but not all, issues within a proceeding should be dismissed, the administrative law judge may issue a proposal for interim decision or an interim order dismissing such issues. An interim order issued by the administrative law judge resulting in partial dismissal is subject to appeal or reconsideration under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission). If the commission determines that one or more, but not all, issues within a proceeding should be dismissed, the commission may issue an interim order dismissing such issues. An interim order issued by the commission resulting in partial dismissal is subject to appeal or reconsideration under §22.123 of this title. [~~An order of the administrative law judge dismissing a proceeding under paragraph (2) of this subsection based solely upon the withdrawal of an application under subsection (g)(1) or (2) of this section is the final order of the commission and is subject to motions for rehearing under §22.264 of this title.~~]

(g) Withdrawal of application. An application may be withdrawn only in accordance with this subsection.

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

(3) The presiding officer may grant a request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued if the request to withdraw is filed by the applicant and the applicant's application would be granted by the proposed order or proposal for decision.

(4) [~~(3)~~] A request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued that is filed by an applicant to whom the result of the proposed order or proposal for decision is adverse[~~,~~] may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

(5) [~~(4)~~] A request to withdraw an application with or without prejudice after the application has been placed on an open meeting agenda for consideration of an appeal of an interim order, a request for certified issues, or a preliminary order with threshold legal or policy issues may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

(6) [~~(5)~~] If a request to withdraw an application is granted, the presiding officer must [~~shall~~] issue an order of dismissal stating whether the dismissal is with or without prejudice. If the presiding officer finds good cause, the order of dismissal under this paragraph must [~~shall~~] not be with prejudice, unless the applicant requests dismissal with prejudice. Such order must, if applicable, specify the facts on which good cause is based and the basis of the dismissal and is the final order of the commission subject to motions for rehearing under §22.264 of this title.

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

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

TRD-202402611
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

SUBCHAPTER N. DECISION AND ORDERS

16 TAC §22.262

Statutory Authority

The amendments are proposed 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, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §14.052, which requires the commission shall adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001, 14.002, 14.052.

§22.262. Commission Action After a Proposal for Decision.

(a) (No change.)

(b) Reasons to Be in Writing. The commission will [~~shall~~] state in writing the specific reason and legal basis for its determination under subsection (a) of this section.

(c) Remand. The commission may remand the proceeding for further consideration.

(1) (No change.)

(2) If[~~,~~ ~~on remand,~~] additional evidence is admitted on remand that results in a substantial revision of the proposed decision or the underlying facts, an amended or supplemental proposal for decision or proposed order must be filed [~~shall be prepared~~]. If an amended or supplemental proposal for decision is filed [~~prepared~~], the provisions of §22.261(d) of this title (relating to Proposal for Decision) apply. Exceptions and replies must [~~shall~~] be limited to discussions, proposals, and recommendations in the supplemental proposal for decision.

(d) Oral Argument Before the Commission.

(1) Any party may request oral argument before the commission before [~~prior to~~] the final disposition of any proceeding.

(2) Oral argument may [~~shall~~] be allowed at the commission's discretion [~~of the commission~~]. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.

(3) A request for oral argument must [~~shall~~] be filed as [~~made in~~] a separate written pleading[~~, filed with the commission's filing clerk~~]. The request must [~~shall~~] be filed no later than 3:00 p.m. seven days before the open meeting at [~~on the seventh working day~~] which the commission is scheduled to consider the case.

(4) Upon the filing of a motion for oral argument, the Office of Policy and Docket Management must [~~Policy Development Division shall~~] send a separate ballot [~~ballots~~] to each commissioner to determine whether the commission will hear oral argument at an open meeting. An affirmative vote by one commissioner is required to grant oral argument. Two [~~Not more than two~~] days before the commission is scheduled to consider the case, the Office of Policy and Docket Management will file a notice to the parties regarding [~~parties may contact the Policy Development Division to determine~~] whether a request for oral argument has been granted.

(5) The absence or denial of a request for oral argument does [~~shall~~] not preclude the commissioners from asking questions of any party present at the open meeting.

(e) (No change.)

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

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

TRD-202402612
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.25, relating to Form and Filing of Tariffs, and §24.238, relating to Fair Market Valuation.

This proposed amendment to §24.25 implements House Bill (HB) 2373, passed during the Texas 88th Regular Legislative Session. HB 2373 repealed Texas Water Code (TWC) §13.145. The amendment allows water and sewage utilities to consolidate its tariff and rate design for more than one system without the need to meet the "substantially similar" systems requirement and regardless of whether the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

The proposed amendment to §24.238 removes language referencing §24.25(k), which related to "multiple system consolidation."

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rules will expand, limit, or repeal an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Tammy Benter, Division Director, Division of Utility Outreach, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient consolidation of water and sewage utility systems. There will not be any probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore,

no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by July 25, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by July 25, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56691.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.25

Statutory Authority

Texas Water Code §13.041(a), which provides 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 the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.136(b), which provides the commission with the authority to specify the form in which utility reports are filed to properly monitor state utilities; Texas Water Code §13.301, which governs the reporting of sales, acquisitions, leases, rentals, mergers, or consolidations of a utility, water supply corporation, or sewer service corporation; Texas Water Code §13.305, which establishes the requirements for voluntarily determining the fair market value associated with a utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b), 13.136(b), 13.301, and 13.305.

§24.25. Form and Filing of Tariffs.

(a) - (j) (No change.)

[~~(k) Multiple system consolidation. Except as otherwise provided in subsection (m) of this section, a utility may consolidate its tariff and rate design for more than one system if:~~]

[~~(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and~~]

[~~(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.~~]

(k) [~~(l)~~] Regional rates. The regulatory authority, where practicable, will consolidate the rates by region for applications submitted by a Class A, B, or C utility, or a Class D utility filing under TWC §13.1872(c)(2), with a consolidated tariff and rate design for more than one system.

[~~(m) Exemption. Subsection (k) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.~~]

(l) [~~(n)~~] Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff must file a request with the commission. The utility must also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, by e-mail, or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date of such delivery must be filed with the commission by the utility as part of the request. Notice must be provided on a form prescribed by the commission and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the classes of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission.

(3) The commission's review of the utility's request is not subject to a contested case hearing. However, the commission will hold a public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, must be implemented on at least an annual basis, unless the commission determines otherwise. Before making a change to the energy cost adjustment clause, notice must be provided as required by paragraph (5) of this subsection. Copies of notices to customers must be filed with the commission.

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility must take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, 13.18715, or 13.1872.

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

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

TRD-202402608
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.238

Statutory Authority

Texas Water Code §13.041(a), which provides 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 the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.136(b), which provides the commission with the authority to specify the form in which utility reports are filed to properly monitor state utilities; Texas Water Code §13.301, which governs the reporting of sales, acquisitions, leases, rentals, mergers, or consolidations of a utility, water supply corporation, or sewer service corporation; Texas Water Code §13.305, which establishes the requirements for voluntarily determining the fair market value associated with a utility.

Cross Reference to Statute: Texas Water Code §§13.041(a) and (b), 13.136(b), 13.301, and 13.305.

§24.238. Fair Market Valuation.

(a) - (d) (No change.)

(e) Selection of utility valuation experts.

(1) - (3) (No change.)

(4) The acquiring utility must contract directly with the selected utility valuation experts and the commission will not be a party to the contract. Subsection (k)(2) of this section, which limits the amount of transaction and closing costs that may be recovered in rates, does not apply to the fees for service agreed to in the contract. If the acquiring utility and any of the utility valuation experts selected under subsection (e)(1) of this section [~~subsection~~] are unable to reach agreement on the terms and conditions for performing the appraisal, including the amount of the service fee, the acquiring utility or utility valuation expert may submit a request for selection of a different utility valuation expert under the control number designated for that purpose. If the commission's executive director or the executive director's designee selects a different utility valuation expert, the time period for all utility valuation experts [~~expert~~] to submit a report under subsection (f)(5) of this section begins when the different utility valuation expert is selected.

(f) Determination of fair market value.

(1) - (5) (No change.)

(6) The ratemaking rate base established under this section will be the rate base for the system or facilities acquired in the transaction. [~~Nothing in this section alters the requirements for multiple system consolidation in §24.25(k) of this title, relating to Form and Filing of Tariffs.~~]

(g) - (k) (No change.)

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

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

TRD-202402609
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.56, §25.59

The Public Utility Commission of Texas (commission) proposes new §25.56, relating to Temporary Emergency Electric Energy

Facilities (TEEEF), and §25.59, relating to Long Lead-Time Facilities. The proposed rules implement Public Utility Regulatory Act (PURA) §39.918 as enacted by House Bill (HB) 2483 from the 87th Texas Legislature (R.S.) and as amended by HB 1500 from the 88th Texas Legislature (R.S.). Proposed §25.56 establishes a process to allow a transmission and distribution utility (TDU) to lease and operate TEEEF to aid in restoring power to the utility's distribution customers during a significant power outage. Proposed §25.59 establishes a process for a TDU to procure, own, and operate, or enter into a cooperative agreement with other TDUs to procure, own, and jointly operate, long lead-time transmission and distribution facilities that will aid in restoring power to the utility's distribution customers following a significant power outage. The proposed rules also provide for the recovery of costs associated with TEEEF and long lead-time facilities.

Growth Impact Statement

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

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

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

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

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

(5) the proposed rules will create new regulations;

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

(7) the proposed rules will not change the number of individuals subject to the rules' applicability, because the rules did not previously exist; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Zachary Dollar, Market Economist, Market Analysis Division, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Dollar has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be providing greater reliability of electricity service to the distribution customers of TDUs operating in the ERCOT region in the event of significant power outages. There will be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by July 18, 2024. Interested persons may contact Julie Blocker (at julie.blocker@puc.texas.gov) and Zachary Dollar (at zachary.dollar@puc.texas.gov) prior to requesting a public hearing to discuss the purpose and scope of a public hearing on the proposed rules. If a hearing is scheduled, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by July 18, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. All comments should refer to Project Number 53404.

The commission also requests comments on the following issues:

1. The commission's current precedent in distributed cost recovery factor proceedings addressing TEEEF costs is that "[a]bsent any applicable [c]ommission rule that provides otherwise, the determination of reasonableness and necessity must be made at the time the [c]ommission approves the [TEEEF] costs." (See Docket No. 53442, Item 166). The proposed rule, instead, requires a TDU to obtain preapproval for the amount of TEEEF generating capacity the TDU seeks to lease and defers the commission's evaluation of the reasonableness and necessity of the TDU's TEEEF costs to the TDU's next comprehensive base rate case.

The commission requests comments on the legal support and policy benefits for each of these approaches and on any process efficiencies either of these approaches will provide.

2. Proposed §25.56(c) requires a TDU to obtain commission approval for the amount of TEEEF generating capacity the TDU seeks to lease.

a. Should a TDU be required to obtain commission approval before entering into, renewing, or extending a lease involving a TEEEF? What are the advantages and disadvantages of such a requirement?

b. If the rule should contain a pre-approval process, what is the appropriate level of granularity for the commission's review? For example, should the commission pre-approve the sizes and types of units the TDU seeks to lease?

3. Proposed §25.56(f)(9) requires a TDU to file an after-action report with the commission following each TEEEF deployment. The commission requests comments on the proposed required contents of these after-action reports. Specifically, should the TDU be required to provide more granularity on the size and types of units deployed? Conversely, should the TDU be required to provide information on any leased TEEEF that was not deployed, and why?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The new sections are proposed under the following provisions of 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, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.918, which directs the commission to allow TDUs to lease and operate TEEEF to aid in restoring power to a utility's distribution customers during a significant power outage, and to allow TDUs to procure, own, and operate, or enter into a cooperative agreement with other TDUs to procure, own, and operate jointly, long lead-time transmission and distribution facilities that will aid in restoring power to a utility's distribution customers following a significant power outage.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001; 14.002; and 39.918.

§25.56. Temporary Emergency Electric Energy Facilities (TEEEF).

(a) Applicability. This section establishes the requirements for a transmission and distribution utility (TDU) to lease, operate, and recover costs associated with a temporary emergency electric energy facility (TEEEF). This section applies to a TDU, other than a river authority, that operates distribution facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers.

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) Significant power outage--an event that:

(A) causes the independent organization certified under Public Utility Regulatory Act (PURA) §39.151 for the ERCOT region to order a TDU to shed load;

(B) the Texas Division of Emergency Management, the independent organization certified under PURA §39.151 for the ERCOT region, or the executive director of the commission determines is a significant power outage; or

(C) results in a loss of electric power that:

(i) affects a significant number of a TDU's distribution customers, and has lasted, or is expected to last, for at least six hours;

(ii) affects distribution customers of a TDU in an area for which the governor has issued a disaster or emergency declaration;

(iii) affects distribution customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted, or is expected to last for, at least 12 hours; or

(iv) creates a risk to public health or safety because it affects a critical infrastructure facility that serves the public such as a hospital, health care facility, law enforcement facility, fire station, or water or wastewater facility.

(2) Temporary Emergency Electric Energy Facility (TEEEF)--a facility that provides electric energy to distribution customers on a temporary basis.

(c) Commission review and approval of TEEEF generating capacity. Except as authorized under this section, before entering into, renewing, or extending any lease involving a TEEEF, a TDU must receive commission approval in a contested case proceeding for the amount of TEEEF generating capacity the TDU seeks to lease.

(1) A TDU must file an application for commission approval for the amount of TEEEF generating capacity the TDU seeks to lease. The application must include the following:

(A) An explanation of all factors that support the reasonableness and necessity of the amount of TEEEF generating capacity requested.

(B) Supporting documentation that demonstrates the reasonableness and necessity of the amount of TEEEF generating capacity requested. This supporting documentation may include historical data on:

(i) the dates and descriptions of events that resulted in a significant power outage;

(ii) the number of affected distribution customers and amount of load, in megawatts, that have experienced a significant power outage in the TDU's service territory; and

(iii) the number of critical load and critical care customers, as defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers) affected by a significant power outage. Provide details on the magnitude and a description of the type of affected critical load or critical care customers.

(C) The number of megawatts of TEEEF generating capacity the TDU has under lease at the time of the TDU's application and any relevant information concerning the TDU's existing leases, such as term lengths and types of TEEEF.

(D) Data must be filed with or submitted to the commission in a format native to Microsoft Excel and must permit basic data manipulation functions, such as copying and pasting of data.

(2) The proceeding in which a TDU's application is reviewed will proceed on the following timeline.

(A) Within 35 days of the TDU filing its application, commission staff will file a recommendation on administrative completeness of the application.

(B) Within 42 days of the TDU filing its application, the presiding officer will make a determination on administrative completeness.

(i) If the application is deemed administratively incomplete, the TDU will have 30 days to cure the insufficiency. If the TDU does not cure the insufficiency within 30 days, then the presiding officer will dismiss the application, without prejudice.

(ii) If the application is deemed administratively complete, within 120 days of the TDU filing its administratively complete application, commission staff must file a recommendation on the reasonableness and necessity of the TDU's requested amount of TEEEF generating capacity.

(C) The commission will issue an order addressing the reasonableness and necessity of the TDU's requested amount of TEEEF generating capacity and include the number of years that the TDU is eligible to lease the requested amount of TEEEF generating capacity.

(d) Emergency Procurement of TEEEF.

(1) A TDU may enter into a lease for TEEEF without prior commission approval if the TDU lacks the leased TEEEF generating capacity necessary to aid in restoring power, consistent with subsection (f) of this section.

(2) The amount of TEEEF generating capacity leased by a TDU under this subsection must not significantly exceed the amount of megawatts necessary to restore electric service to the TDU's distribution customers.

(3) The TDU must provide sufficient documentation to support the amount of TEEEF generating capacity leased by a TDU under this subsection during the TDU's next comprehensive base rate proceeding.

(e) Competitive bidding process. A TDU must, when reasonably practicable, use a competitive bidding process to lease TEEEF under this section.

(1) In any proceeding in which the commission is reviewing the reasonableness or necessity of the costs associated with leasing a TEEEF under this section, the commission may also consider whether the contracts the TDU entered into to lease TEEEF were reasonable relative to other contracts that were available to the TDU.

(2) In any proceeding in which a TDU is requesting recovery of costs associated with leasing a TEEEF that was not procured using a competitive bidding process, the TDU must demonstrate that it was not reasonably practicable to use a competitive bidding process.

(f) Deployment of TEEEF.

(1) A TDU may deploy TEEEF to aid in restoring power to its distribution customers during an event that a TDU reasonably determines is a significant power outage in which:

(A) the independent organization certified under PURA §39.151 for the ERCOT region has ordered the TDU to shed load; or

(B) the TDU's distribution facilities are not being fully served by the bulk power system under normal operations.

(2) A TDU that leases a TEEEF must not sell energy or ancillary services from the facility.

(3) A TEEEF must:

(A) be operated in isolation from the bulk power system; and

(B) not be included in locational marginal pricing calculations, pricing, or reliability models developed by the independent organization certified under PURA §39.151 for the ERCOT region.

(4) A TDU must notify the independent organization certified under PURA §39.151 for the ERCOT region and all operators of affected generators or load resources at least 10 minutes prior to isolation of the affected area from the bulk power system, immediately upon isolation of the affected area from the bulk power system, at least 10 minutes prior to the reconnection of the affected area to the bulk power system, and after the reconnection has been completed.

(A) For the purposes of this subsection, affected generators or load resources include only those generators and load resources that:

(i) are registered with the independent organization certified under PURA §39.151 for the ERCOT region for purposes of settlement; and

(ii) are located within the portion of the grid that will be isolated from the bulk power system while a TEEEF is energized.

(B) Notices prior to isolation of the affected area from the bulk power system must include:

(i) identification of each substation and modeled load associated with customer load that will be served by the TEEEF;

(ii) the total amount of load expected to be served by the TEEEF;

(iii) the time the affected area is anticipated to be isolated from the bulk power system;

(iv) the time the affected area is anticipated to be reconnected to the bulk power system;

(v) identification of each affected generator or load resource that is located within the portion of the grid that will be isolated from the bulk power system; and

(vi) a statement that any energy produced by an affected generator during the time it is isolated from the bulk power will not be settled through the independent organization certified under PURA §39.151 for the ERCOT region's systems.

(C) The notice prior to reconnection of the affected area to the bulk power system must state the anticipated time that the affected area will be reconnected to the bulk power system.

(D) After the affected area has been isolated from or reconnected to the bulk power system, the TDU's notice must state the time the isolation from or reconnection to the bulk power system was completed.

(E) Except for an isolation of load from the bulk power system due to circumstances beyond the TDU's control, a TDU's isolation or reconnection of load associated with any energization of a TEEEF that occurs outside of an energy emergency declared by the independent organization certified under PURA §39.151 for the ERCOT region must be coordinated with the independent organization certified under PURA §39.151 for the ERCOT region if the total amount of load at any single substation that would be isolated or reconnected within a period of 10 minutes exceeds 20 megawatts. If the TDU has provided notice of an anticipated isolation or reconnection as required by this paragraph, and coordination with the independent organization certi-

fied under PURA §39.151 for the ERCOT region results in a delay in the anticipated time of isolation or reconnection, the TDU must notify operators of affected generators and load resources of such delay.

(5) Upon receiving notice from a TDU that an area served by a TEEEF will be disconnected from the bulk power system, an operator of an affected generator or load resource that is required by ERCOT protocols to provide status telemetry to ERCOT must, at the expected time of the disconnection indicated in the TDU's notice, update its real-time status telemetry and current operating plan information to reflect that the generator or load resource is disconnected from the ERCOT system and is unavailable for dispatch by ERCOT and will be unavailable for dispatch by ERCOT for the time period specified by the TDU in its notice. Upon receiving notice that the affected area has been reconnected to the bulk power system, the operator of the affected generator or load resource must update the telemetry to reflect the appropriate status of the generator or load resource.

(6) A TDU's liability related to the provision of service using a TEEEF is governed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor-Owned Transmission and Distribution Utilities).

(7) A TDU will ensure, to the extent reasonably practicable, that:

(A) a retail distribution customer's usage during the TDU's operation of a TEEEF is excluded from the electric usage reported to the independent organization certified under PURA §39.151 for the ERCOT region for settlement and to retail electric providers (REPs) for customer billing; and

(B) Energy generated in an area isolated from the bulk power system during operation of the TEEEF, including any energy generated by an affected generator, is excluded from the generation reported to the independent organization certified under PURA §39.151 for the ERCOT region for settlement purposes.

(8) During an energy emergency declared by the independent organization certified under PURA §39.151 for the ERCOT region, the amount of any load shed by a TDU for the area operated in isolation from the bulk power system during operation of a TEEEF must be accounted for net of any generation in the affected area that was online and producing before the area was isolated from the bulk power system.

(9) Following all deployments of a TEEEF by a TDU, the TDU must file a report with the commission. The report must include:

(A) The date and time TEEEF was deployed;

(B) The duration that the affected area was isolated from the bulk power system;

(C) A description of the events that resulted in a significant power outage;

(D) The number and capacity of generators or load resources that were affected by TEEEF deployment, if any;

(E) The number and type of critical load, critical care customers, or other critical infrastructure facilities impacted by a significant power outage, if any;

(F) Details explaining if a significant power outage affected critical load, critical care customers, or other critical infrastructure facilities as described in subparagraph (E) of this paragraph. If available, the TDU may also provide details on whether such customers had generation or load resources installed behind the meter at the time of the significant power outage; and

(G) If applicable, the number of megawatts of additional TEEEF generating capacity that were procured under subsection (d) of this section and an explanation for the necessity of the emergency procurement.

(g) Emergency operations annex. A TDU that leases TEEEF under this section must include a detailed plan on the use of the TDU's leased TEEEF in the TDU's emergency operations plan filed with the commission, as required by §25.53 of this title (relating to Electric Service Emergency Operations Plans), that is updated, as necessary, on an ongoing basis. The TDU's plan must include a sufficient level of detail such that the independent organization certified under PURA §39.151 for the ERCOT region can use the information for system restoration planning.

(h) Eligible costs.

(1) Costs to obtain, maintain, and operate a TEEEF. Reasonable and necessary costs of leasing, maintaining, and operating a TEEEF, including the present value of future payments required under the lease, are eligible for recovery under this section. A lease involving a TEEEF must be treated as a capital lease or finance lease for ratemaking purposes, regardless of its classification under generally accepted accounting principles or other accounting frameworks.

(2) Return. Reasonable and necessary costs under this section include a return on investment using the rate of return on investment established in the commission's final order in a TDU's most recent comprehensive base rate proceeding. The return must be applied beginning on the date that a TEEEF is available for service.

(i) Deferred recovery of certain eligible costs. A TDU may create a regulatory asset to defer the following for recovery in a future ratemaking proceeding:

(1) The reasonable and necessary incremental operations and maintenance expenses; and

(2) The return, not otherwise recovered in a ratemaking proceeding.

(j) Cost recovery. Eligible costs under this section may be recovered as follows.

(1) Ratemaking proceedings. A TDU may request recovery of eligible costs, including any deferred expenses, through a standalone TEEEF rider proceeding, a proceeding under §25.243 of this title (relating to Distribution Cost Recovery Factor (DCRF)), or in another ratemaking proceeding where it is appropriate to recover distribution-invested capital and associated costs.

(A) A TDU must provide notice to REPs 45 days prior to the effective date of a new rate.

(B) TEEEF costs must not be allocated to, or collected from, retail transmission service customers.

(C) Notwithstanding the provisions of §25.243 of this title, an allocation of TEEEF costs among distribution-level rate classes, based on substation-level class non-coincident peak demand from the TDU's current or most recent base rate proceeding, is presumed to be reasonable.

(D) TEEEF rates may not be established on a per-kilowatt-hour basis for any customer class that includes demand charges.

(E) Upon any amendment to a lease under this section that would reduce the rate of cost recovery necessary for a TEEEF, a TDU must submit an application to reflect the reduced rate of cost recovery necessary, in order to ensure that the benefit of such reduced costs are reflected in rates as soon as is reasonably practicable.

(F) All TEEEF costs must be reviewed and included in any proceeding in which TEEEF cost recovery is established or revised.

(2) Notice. The notice for any ratemaking proceeding in which eligible TEEEF costs are sought must specifically identify those eligible costs.

(3) Affiliate contracts. For any contract between a TDU and an affiliate, the TDU bears the burden of proof to show that the terms to the TDU were reasonable and necessary and did not exceed the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons within the same market area or having the same market conditions. In addition, all affiliate payments must comply with the requirements of PURA §36.058.

(4) Temporary rates and reconciliation. If eligible costs are not reviewed for reasonableness and necessity, the rates to recover those costs are temporary rates that must be reconciled in the TDU's next comprehensive base rate proceeding, including to determine whether the costs are reasonable and necessary. Any over-recovery must be returned to customers with interest at the TDU's weighted average cost of capital most recently approved for the TDU during the time the over-recovery occurred and during the time the refund is in effect.

(k) Grandfathering of previously leased TEEEF.

(1) Subject to paragraph (2) of this subsection, any lease for a TEEEF that a TDU entered into before the effective date of this rule is exempt from subsection (c) of this section.

(2) Any lease for a TEEEF that a TDU entered into before the effective date of this rule that is amended, renewed, or extended after the effective date of this rule must comply with the requirements of subsection (c) of this section.

(3) Any costs associated with a TEEEF that were deemed reasonable and necessary in a proceeding under §25.243 of this title prior to the effective date of this rule are not required to be reviewed for reasonableness and necessity in the TDU's next comprehensive base rate case.

§25.59. Long Lead-Time Facilities.

(a) Applicability. This section provides that a transmission and distribution utility (TDU) may procure, own, operate, and recover costs of long lead-time facilities. This section applies to a TDU, other than a river authority, that operates distribution facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers.

(b) Definitions. The following terms, when used in this section, have the following meanings unless the context indicates otherwise.

(1) Long lead-time facilities--transmission and distribution facilities that would aid in restoring power to the TDU's distribution customers following a significant power outage and require at least six months to obtain. These facilities may not include energy storage equipment or facilities as described under Public Utility Regulatory Act (PURA), Chapter 35, Subchapter E.

(2) Significant power outage--an event that:

(A) causes the independent organization certified under PURA §39.151 for the ERCOT region to order a TDU to shed load;

(B) the Texas Division of Emergency Management, the independent organization certified under PURA §39.151 for the ERCOT region, or the executive director of the commission determines should be classified as a significant power outage; or

(C) results in a loss of electric power that:

(i) affects a significant number of a TDU's distribution customers and has lasted, or is expected to last, for at least six hours;

(ii) affects a TDU's distribution customers in an area for which the governor has issued a disaster or emergency declaration;

(iii) affects a TDU's distribution customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted, or is expected to last, for at least 12 hours; or

(iv) creates a risk to public health or safety because it affects a critical infrastructure facility that serves the public such as a hospital, health care facility, law enforcement facility, fire station, or water or wastewater facility.

(c) Contracts for long lead-time facilities. A TDU may enter into contracts to procure long lead-time facilities. Such contractual arrangements may include cooperative agreements with another TDU or procurement subscriptions with a transmission and distribution equipment supply service company or other third party as described under this section.

(1) Cooperative agreements. A TDU may enter into a cooperative agreement with another TDU to:

(A) jointly procure, own, and operate long lead-time facilities;

(B) maintain inventories of long lead-time transmission and distribution equipment; or

(C) engage in transfers of such facilities or equipment following a significant power outage.

(2) Procurement subscriptions. A TDU may subscribe with a transmission and distribution equipment supply service to access and utilize an inventory of transmission and distribution equipment for the construction, modification, or operation of long lead-time facilities.

(d) Emergency operations annex. A TDU that procures, owns, and operates long lead-time facilities under this section must include these facilities in the TDU's emergency operations plan filed with the commission, as required by §25.53 of this title (relating to Electric Service Emergency Operations Plans), on an ongoing basis.

(e) Eligible costs.

(1) Costs to procure, own, maintain, and operate long lead-time facilities. Reasonable and necessary costs of procuring, owning, maintaining, and operating long lead-time facilities, including costs incurred under a cooperative agreement or procurement subscription, are eligible for recovery under this section. These costs may be recovered beginning on the date that a long lead-time facility is procured.

(2) Return. Reasonable and necessary costs under this section include a return on investment using the rate of return on investment established in the commission's final order in the TDU's most recent comprehensive ratemaking proceeding. The return may be applied beginning on the date that a long lead-time facility is placed into service.

(f) Deferred recovery of certain eligible costs. A TDU may defer to a future ratemaking proceeding the recovery of incremental operations and maintenance expenses and the return, not otherwise recovered in a rate proceeding, associated with the procurement, ownership, maintenance, and operation of long lead-time facilities.

(g) Cost recovery. Eligible costs under this section may be recovered as follows.

(1) Ratemaking proceedings. A TDU may request recovery of eligible costs, including any deferred expenses, pertaining to distribution invested capital and its associated costs through a proceeding under §25.243 of this title (relating to Distribution Cost Recovery Factor (DCRF)), or in another ratemaking proceeding appropriate to recover distribution-invested capital and its associated costs. A TDU may request recovery of eligible costs under this section, including any deferred expenses, pertaining to transmission-invested capital and its associated costs through a proceeding under §25.192(h) of this title (relating to Interim Update of Transmission Rates) or in another ratemaking proceeding appropriate to recover transmission-invested capital and its associated costs.

(2) Notice. The notice for any ratemaking proceeding in which eligible costs addressed in this section are sought must specifically identify those eligible costs.

(3) Affiliate contracts. For any contract between the TDU and an affiliate, the TDU bears the burden of proof that the terms to the TDU were reasonable, necessary, prudent, and did not exceed the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons within the same market area or having the same market condition. In addition, all affiliate payments must comply with the requirements of PURA §36.058.

(4) Temporary rates and reconciliation. If eligible costs are not reviewed for prudence, reasonableness, and necessity, the rates to recover those costs are temporary rates that must be reconciled in the TDU's next comprehensive ratemaking proceeding. Any over-recovery must be returned to customers with interest at the TDU's weighted average cost of capital most recently approved for the TDU during the time the over-recovery occurred and during the time the refund is in effect.

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

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

TRD-202402613
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.508

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.508, relating to Reliability Standard for the Electric Reliability Council of Texas (ERCOT) Region.

The proposed rule will facilitate the implementation of Public Utility Regulatory Act (PURA) §39.159(b)(1) as revised by Section 18 of Senate Bill (S.B.) 3 during the Texas 87th Regular Legislative Session. The proposed rule will create a reliability standard for the ERCOT region, made up of three measures of loss of load events: frequency, magnitude, and duration.

Growth Impact Statement

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

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

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

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

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

(5) the proposed rule will create a new regulation, implementing a new requirement from S.B. 3;

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Werner Roth, Senior Market Economist, Market Analysis, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

Public Benefits

Mr. Roth has determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be an increased ability to determine if there is sufficient generation capacity to meet the projected electric demand of Texans in the ERCOT region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by July 15, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by July 15, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 54584.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions:

1. What are the advantages and disadvantages of enshrining an exceedance tolerance for magnitude and duration in the commission's rule?

2. Should the exceedance tolerance be evaluated more frequently than the reliability standard? If so, what is the appropriate frequency?

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The rule is proposed 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, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.159(b)(1), which directs the commission to ensure that ERCOT establish requirements to meet the reliability needs of the ERCOT region; §39.151(d), which directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and allows the commission to delegate these responsibilities to an independent organization; §39.151(h), which allows the independent organization to adopt procedures and acquire resources needed to carry out its listed functions, consistent with any rules or orders of the commission; §39.151(i), which allows the commission to delegate authority to ERCOT to enforce operating standards within the ERCOT region; and §39.151(j), which requires market participants in the ERCOT region to observe reliability policies and guidelines established by ERCOT.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 39.159(b)(1), and 39.151(d), (h), (i), and (j).

§25.508. Reliability Standard for the Electric Reliability Council of Texas (ERCOT) Region.

(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context indicates otherwise.

(1) Exceedance tolerance--the maximum acceptable percentage of simulations in which the modeled ERCOT system experiences a loss of load event that exceeds the threshold for a given metric of the reliability standard.

(2) Loss of load event--an occurrence when the system load is greater than the available resource capacity to serve that load, resulting in involuntary load shed.

(3) Transmission operator--as the term is defined in the ERCOT protocols.

(4) Weatherization effectiveness--the assumed percentage reduction in the amount of weather-related unplanned outages for thermal generation resources included in the model, due to compliance with the weatherization standards in §25.55 of this title (relating to Weather Emergency Preparedness).

(b) Reliability standard for the ERCOT region. The bulk power system for the ERCOT region meets the reliability standard if an ERCOT model analysis finds that the system meets each of the criteria provided in this subsection.

(1) Frequency. The expected loss of load events for the ERCOT region must be less than 0.1 days per year on average, i.e., 0.1 loss of load expectation (LOLE).

(2) Duration. The maximum expected length of a loss of load event for the ERCOT region, measured in hours, must be less than 12 hours, with a 1.00 percent exceedance tolerance.

(3) Magnitude. The expected highest instantaneous level of load shed during a loss of load event for the ERCOT region, measured in megawatts, must be less than the maximum number of megawatts of load shed that can be safely rotated during a loss of load event, as determined by ERCOT, in consultation with commission staff and the transmission operators, with a 0.25 percent exceedance tolerance.

(c) Reliability assessment.

(1) ERCOT's assessment. Beginning January 1, 2026, ERCOT must initiate an assessment to determine whether the bulk power system for the ERCOT region is meeting the reliability standard and is likely to continue to meet the reliability standard for the three years following the date of assessment. The assessment must be conducted at least once every five years.

(A) Before conducting the assessment, ERCOT must file a list of proposed modeling assumptions to be used in the reliability assessment for commission review. The proposed assumptions must include:

(i) the number of historic weather years that will be included in the modeling;

(ii) the amount of new resources and retirements, in megawatts, listed by resource type;

(iii) the weatherization effectiveness;

(iv) an update to the calculation for the cost of new entry, including review of the current reference technology; and

(v) any other assumptions that would impact the modeling results, along with an explanation of the possible impact of the additional assumptions.

(B) ERCOT's assessment must include review and analysis of the resource fleet, loads, and other system characteristics for the ERCOT region for the following points in time:

(i) the current year's system configuration;

(ii) the expected system configuration three years from the date of the current year's system analysis; and

(iii) the system configuration three years from the date of the current year's system analysis that would be required to achieve the market equilibrium reserve margin.

(C) The assessment results must include, at a minimum, the following metrics for each point in time:

(i) the LOLE;

(ii) the probability of a loss of load event exceeding the duration threshold established in subsection (b)(2) of this section;

(iii) the probability of a loss of load event exceeding the magnitude threshold established in subsection (b)(3) of this section;

(iv) the expected unserved energy; and

(v) the normalized expected unserved energy.

(D) If the assessment shows that any reviewed systems fall below the reliability standard described in subsection (b) of this section, ERCOT must include in its assessment recommended changes to components of the ERCOT market design intended to address that deficiency.

(2) Commission's review of assessment. ERCOT must file its assessment with the commission. The commission will review ERCOT's assessment to determine whether any market design changes are necessary.

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

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

TRD-202402605
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) proposes an amendment to §151.1001, concerning passing standards for educator certification examinations. The proposed amendment would specify the satisfactory scores for the examinations for English Language Arts and Reading 7-12; Health Early Childhood (EC)-12; Physical Education EC-12; edTPA: Elementary Literacy; edTPA: Elementary Mathematics; Early Childhood Education; edTPA: Elementary Education-Mathematics with Literacy Task 4; and edTPA: Career and Technical Education and remove Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and requires a satisfactory level of performance on each core subject covered by an examination. The proposed passing standards were established by subject-matter expert stakeholder committee groups.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. The proposed amendment to Figure: 19 TAC §151.1001(b)(4) would introduce passing standards for the English Language Arts and Reading 7-12 examination.

The proposed amendment to Figure: 19 TAC §151.1001(b)(7) would introduce passing standards for the Health EC-12 and Physical Education EC-12 examinations.

The proposed amendment to Figure: 19 TAC §151.1001(b)(14) would remove Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES as a valid exam and introduce passing standards for the edTPA: Elementary Literacy; edTPA: Elementary Mathematics; edTPA: Early Childhood Education; edTPA: Elementary Education-Mathematics with Literacy Task 4; and edTPA: Career and Technical Education.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

FISCAL IMPACT: Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would expand an existing regulation by including passing standards for new examinations.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Garcia has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide clarity to educators and others regarding the required passing standards for Texas certification examinations. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 28, 2024, and ends July 29, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on June 28, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §21.048(a), which requires the commissioner of education to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

§151.1001. Passing Standards.

(a) As required by the Texas Education Code, §21.048(a), the commissioner of education shall determine the satisfactory level of performance for each educator certification examination and require a satisfactory level of performance on each core subject covered by an examination. The figures in this section identify the passing standards established by the commissioner for educator certification examinations.

(b) The figures in this subsection identify the passing standards established by the commissioner for classroom teacher examinations.

(1) The figure in this paragraph identifies the passing standards for early childhood through Grade 6 examinations.
Figure: 19 TAC §151.1001(b)(1) (No change.)

(2) The figure in this paragraph identifies the passing standards for Grades 4-8 examinations.
Figure: 19 TAC §151.1001(b)(2) (No change.)

(3) The figure in this paragraph identifies the passing standards for secondary mathematics and science examinations.
Figure: 19 TAC §151.1001(b)(3) (No change.)

(4) The figure in this paragraph identifies the passing standards for secondary English language arts and social studies examinations.
Figure: 19 TAC §151.1001(b)(4)
[~~Figure: 19 TAC §151.1001(b)(4)~~]

(5) The figure in this paragraph identifies the passing standards for speech and journalism examinations.
Figure: 19 TAC §151.1001(b)(5) (No change.)

(6) The figure in this paragraph identifies the passing standards for fine arts examinations.
Figure: 19 TAC §151.1001(b)(6) (No change.)

(7) The figure in this paragraph identifies the passing standards for health and physical education examinations.
Figure: 19 TAC §151.1001(b)(7)
[~~Figure: 19 TAC §151.1001(b)(7)~~]

(8) The figure in this paragraph identifies the passing standards for computer science and technology applications examinations.
Figure: 19 TAC §151.1001(b)(8) (No change.)

(9) The figure in this paragraph identifies the passing standards for career and technical education examinations.
Figure: 19 TAC §151.1001(b)(9) (No change.)

(10) The figure in this paragraph identifies the passing standards for bilingual examinations.
Figure: 19 TAC §151.1001(b)(10) (No change.)

(11) The figure in this paragraph identifies the passing standards for languages other than English (LOTE) examinations.
Figure: 19 TAC §151.1001(b)(11) (No change.)

(12) The figure in this paragraph identifies the passing standards for special education examinations.
Figure: 19 TAC §151.1001(b)(12) (No change.)

(13) The figure in this paragraph identifies the passing standards for supplemental examinations.
Figure: 19 TAC §151.1001(b)(13) (No change.)

(14) The figure in this paragraph identifies the passing standards for pedagogy and professional responsibilities examinations.
Figure: 19 TAC §151.1001(b)(14)
[~~Figure: 19 TAC §151.1001(b)(14)~~]

(15) The figure in this paragraph identifies the passing standards for content certification examinations.
Figure: 19 TAC §151.1001(b)(15) (No change.)

(c) The figure in this subsection identifies the passing standards established by the commissioner for student services examinations.
Figure: 19 TAC §151.1001(c) (No change.)

(d) The figure in this subsection identifies the passing standards established by the commissioner for administrator examinations.
Figure: 19 TAC §151.1001(d) (No change.)

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

Filed with the Office of the Secretary of State on June 17, 2024.

TRD-202402644
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER T. FAIR PLAN

DIVISION 1. PLAN OF OPERATION

28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, 5.9930 - 5.9933

The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 concerning residual market coverage for property owners' associations. The proposed new and amended sections implement House Bill 998, 88th Legislature, 2023.

EXPLANATION. Amended §§5.9910, 5.9911, and 5.9913 - 5.9917 and new §§5.9930 - 5.9933 implement HB 998. HB 998 authorizes the Fair Access to Insurance Requirements Plan (FAIR Plan) to provide property owners' association insurance for condominium owners' and homeowners' associations.

Under HB 998, the commissioner must, by rule, set a designated area for FAIR Plan property owners' association insurance for condominium owners' and homeowners' associations. According to Insurance Code §2211.1515(a), in determining the designated area, the commissioner must "to the extent practicable, ensure the designated area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under §2210.005; and follow geographical features."

After determining the designated area, Insurance Code §2211.051(b) authorizes the commissioner to set underserved areas within that designated area, if the commissioner determines that "property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks."

The proposed amendments incorporate references to property owners' association insurance in various sections of FAIR Plan's plan of operation where residential property insurance is referenced and remove the term "residential" before "property" where those terms appear, to reflect the expanded property types authorized under Insurance Code Chapter 2211.

In addition, the proposed amendments enhance clarity and consistency with agency style guidelines by deleting "shall" or replacing "shall" with "will" or another context-appropriate word. Amendments also replace "Association" with "FAIR Plan," "Commissioner" with "commissioner," and "pursuant to" with "under," where appropriate. The proposal makes changes to (1) update statutory references to reflect Insurance Code recodification; (2) add or amend Insurance Code section titles and citations for consistency; and (3) correct and revise punctuation, capitalization, and grammar to reflect current agency drafting style and plain language preferences, as appropriate. These amendments are not noted in the descriptions of amendments that follow unless it is necessary or appropriate to provide additional context or explanation.

The proposed new and amended sections are described in the following paragraphs.

Section 5.9910. Purpose. The proposed amendments incorporate property owners' association insurance into the purpose of FAIR Plan and change "qualified citizens of Texas" to "insurable risks" to better align with statutory language and recognize that FAIR Plan may insure entities as well as individuals.

Section 5.9911. Definitions. The proposed amendments add and clarify definitions within the section to align with the broader scope of Insurance Code Chapter 2211, introducing definitions for "property owners' association," "property owners' association insurance," "TDI," and "TWIA." The proposal adds "FAIR Plan" to the current definition of "Association" and replaces "Association" with "FAIR Plan" in the proposed rule text. With this change, both "Association" and "FAIR Plan" have the same meaning in these rules. Using "FAIR Plan" adds clarity because there are many associations. "Association" will be replaced with "FAIR Plan" in future amendments to other FAIR Plan rules.

An amendment adds property owners' association insurance to the definition of "inspector" to clarify that an inspector may determine the condition of properties for which property owners' association insurance coverage under FAIR Plan is sought.

Amendments update the Insurance Code citations in the definition of "residential property insurance" and expand the definition of "underserved area" to include both residential property insurance and property owners' association insurance.

An amendment adds property owners' association insurance to the definition of "underwriting rules" to clarify that the underwriting rules include those for property owners' association insurance.

Section 5.9913. Authority of Agents and Commissions. The proposed amendments add "property owners' association" as a type of applicant. The proposal also increases readability of §5.9913(b) by rephrasing it to state that agents may not hold themselves out as agents of FAIR Plan.

Section 5.9914. Maximum Limits of Liability and Limitations. The proposed amendments set the maximum liability limit for property owners' association insurance at $3,000,000 for commercial structures and authorize FAIR Plan to reinsure some or all risks that are within or at the proposed limit.

In a request for information posted on TDI's website on January 8, 2024, TDI asked for input on maximum limits of liability for property owners' association insurance. No comments were received addressing those limits.

When drafting this proposal, TDI looked at residual market limits for other states and considered the purpose and funding of FAIR Plan when setting the limit. The proposed maximum liability limit of $3,000,000 acknowledges that property owners' association insurance presents different risks than FAIR Plan's residential coverage.

Section 5.9915. Inspections. Proposed amendments make changes throughout the section to add a reference to property owners' association insurance and revise or remove use of the word "residential" in addressing property insurance, for

consistency with HB 998 and other proposed amendments and new text.

Section 5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements. The proposed amendments (1) remove the term "residential" in "residential property" to denote that property under the section includes commercial property in property owners' association, and (2) replace "association policies" with "residential property insurance" in §5.9916(d) to clarify that the prohibition against covering businesses or commercial risks applies only to residential property insurance, not property owners' association insurance.

Section 5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation. The proposed amendments expand the scope of the section by adding "or property owners' association insurance" after each instance of "residential property insurance." This addition reflects the expanded scope of Insurance Code Chapter 2211 to include property owners' association insurance, as authorized under HB 998.

The proposal also amends the grammar and punctuation of §5.9917(a) by replacing "that" with "all of the following" and changing the colon to a period; removing "and" at the end of §5.9917(a)(1) and (2); and replacing the semicolons with a period so each subsection is a full sentence.

An amendment updates an incorrectly titled citation to the "Property Tax Code" by removing "Property," so the citation correctly reads "§33.06 of the Tax Code." Amendments also add the title of Tax Code §33.06 so it is consistent with other code citations throughout the proposal.

Section 5.9930. Designated Area for Property Owners' Association Policies. Proposed new §5.9930 designates the area where FAIR Plan could write property owners' association insurance under Insurance Code §2211.1515. As proposed, the commissioner designates the region extending 10 miles inland from the geographical features that form the border of the TWIA catastrophe area as the designated area.

Insurance Code §2211.1515 sets an inland boundary for the designated area --10 miles from the catastrophe area. Setting the coastal side boundary as the catastrophe area boundary and proposing a 10-mile strip as the designated area aligns with information from legislative hearings and comments received on the informal draft.

Section 5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance. Proposed new §5.9931 specifies the requirements for property owners' associations to petition for an area to be classified as underserved for property owners' association insurance. The proposed new rule allows property owners' associations to petition the commissioner to decide that an area is underserved. The section requires the petitioner to provide information that will help the commissioner determine whether an area is underserved.

Section 5.9932. Petition Procedures for Underserved Area for Property Owners' Association Insurance. Proposed new §5.9932 outlines TDI's procedures for assessing petitions from property owners' associations seeking classification of areas as underserved for property owners' association insurance.

New subsection (a) states that TDI will review petitions for compliance with §5.9931. TDI may also gather additional information to determine if the proposed area qualifies as underserved.

New subsection (b) states that TDI may schedule a public hearing and provide notice as required under Insurance Code §2211.051.

New subsection (c) provides that the commissioner may determine that some, all, or none of the proposed area is underserved.

Section 5.9933. Setting Underserved Areas for Property Owners' Association Insurance. Proposed new §5.9933 recognizes the commissioner's statutory authority under Insurance Code §2211.051(b) to issue an order, either in response to a petition or on the commissioner's own initiative, determining that all or part of the designated area is underserved.

TDI received comments from one commenter on a request for information posted on TDI's website on January 8, 2024. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of Property and Casualty Lines, has determined that during each year of the first five years the proposed new and amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them other than that imposed by the statute. Ms. Baker made this determination because the proposed new and amended sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new and amended sections.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new and amended sections are in effect, Ms. Baker expects that administering the proposed new and amended sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 2211, as amended by House Bill 998.

Ms. Baker expects that the new and amended sections will not increase the cost of compliance with Insurance Code Chapter 2211 because they do not impose requirements beyond those in the statute and those necessary to implement the statute. There could be a cost for property owners' associations to submit a petition. However, property owners' associations are not required to submit petitions. The rule provides a pathway for property owners' associations to ask the commissioner to classify an area as underserved. Insurance Code §2211.1515, as added by HB 998, authorizes a property owners' association in an underserved area of the area designated by the commissioner to apply to the FAIR Plan for property owners' association insurance. As a result, the cost associated with the new and amended sections does not result from the enforcement or administration of the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new and amended sections will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposal is necessary to

implement legislation. The proposed rule implements Insurance Code Chapter 2211, as amended by HB 998.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new and amended sections are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

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

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on July 29, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2864 at 2:00 p.m., central time, on July 16, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. TDI proposes amendments to §§5.9910, 5.9911, 5.9913 - 5.9917, and new §§5.9930 - 5.9933 under Insurance Code §§2211.051, 2211.053(b), 2211.1515(a), and 36.001.

Insurance Code §2211.051 authorizes the commissioner to include in FAIR Plan the delivery of property owners' association insurance in underserved areas as provided in Insurance Code §2211.1515 if the commissioner determines, after notice and a hearing, that property owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks.

Insurance Code §2211.053(b) requires amendments to FAIR Plan's plan of operation to be adopted by the commissioner by rule.

Insurance Code §2211.1515(a) provides that the commissioner must, when determining the area to be designated by rule, ensure the area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under §2210.005; and follow geographical features when making this decision.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 5.9910, 5.9911, 5.9913 - 5.9917, and 5.9930 - 5.9933 implement Insurance Code §§2211.051, 2211.054, 2211.055, and 2211.1515 and HB 998.

§5.9910. Purpose.

The Texas FAIR Plan Association was established by Insurance Code Chapter 2211, concerning FAIR Plan, [~~Article 21.49A~~] for the purpose of delivering residential property insurance, and later, property owners' association insurance, to insurable risks [~~qualified citizens of Texas~~] in areas determined by the commissioner [~~Commissioner of Insurance~~] to be underserved areas. The purpose of this plan of operation is to set forth and establish the structure, function, procedures, and powers of the Texas FAIR Plan Association.

§5.9911. Definitions.

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

(1) Agent--Any person licensed by the commissioner [~~Commissioner~~] as a general lines property and casualty agent under [~~pursuant to~~] Insurance Code §4051.051, concerning License Required. [~~Article 21.14. sec. 2.~~]

(2) Applicant--Any person applying for insurance from FAIR Plan, [~~the Association~~] including any person designated by the applicant to be the applicant's representative at an inspection.

(3) Association or FAIR Plan--The Fair Access to Insurance Requirements (FAIR) Plan Association created under Insurance Code Chapter 2211, concerning FAIR Plan. [~~Article 21.49A.~~]

(4) Commissioner--The Texas commissioner of insurance [~~Commissioner of Insurance of the State of Texas~~].

(5) Governing Committee--The Governing Committee of FAIR Plan [~~the Association~~] authorized under [~~pursuant to~~] Insurance Code §2211.052, concerning Administration of FAIR Plan; Composition of Governing Committee. [~~Article 21.49A, sec. 3.~~]

(6) Inspector--The individual(s) or organization(s) designated by FAIR Plan [~~the Association~~] to make inspections to determine the condition of the properties for which residential property insurance and property owners' association insurance is sought and to perform such other duties as may be authorized by FAIR Plan [~~the Association~~] or the commissioner [~~Commissioner~~].

(7) Insurable risk--Property that meets the underwriting rules of FAIR Plan [~~the Association~~] for determining the insurability of the risk.

(8) Member insurer or member--An insurer licensed to write property and casualty insurance in Texas and writing residential property insurance in Texas, including reciprocal exchanges and Lloyds plan insurers.

(9) Property owners' association--Homeowners' or condominium owners' association.

(10) Property owners' association insurance--Has the meaning assigned by Insurance Code §2211.011(6-a), concerning Definitions.

(11) [~~(9)~~] Residential property insurance--Coverage as defined in Insurance Code §2211.001 [~~Article 21.49A §2(3)~~], concerning

Definitions, with the exception of farm and ranch owners and farm and ranch insurance as set forth in Insurance Code §2301.003, concerning Applicability of Subchapter. [~~Article 5.13-2 sec. 1.~~]

(12) [~~(10)~~] Residential property insurance premiums--Net direct written premiums for residential property insurance for a calendar year as determined by the Texas residential property statistical plan.

(13) TDI--The Texas Department of Insurance.

(14) [~~(11)~~] Underserved area--

(A) For residential property insurance, the [~~The~~] areas [~~of the State of Texas so~~] designated by the commissioner [~~Commissioner~~] in §5.3701 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Insurance Code Article 21.49A).

(B) For property owners' association insurance, the areas determined by the commissioner under §5.9933 of this chapter (relating to Determining Underserved Areas for Property Owners' Association Insurance).

(15) TWIA--The Texas Windstorm Insurance Association established under Insurance Code Chapter 2210.

(16) [~~(12)~~] Underwriting rules--The underwriting rules for residential property insurance and property owners' association insurance as developed by FAIR Plan that [~~the Association and which~~] have been filed with and approved by the commissioner [~~Commissioner~~].

§5.9913. Authority of Agents and Commissions.

(a) Upon request, an agent[~~,~~] may assist any property owners' association or owner of residential property in the completion and submission of an application for insurance on forms prescribed by FAIR Plan [~~the Association~~].

(b) Agents may not hold themselves out as agents of FAIR Plan. [~~No agent, even if licensed to represent one or more member insurers of the Association with respect to policies not underwritten by the Association, shall hold himself out as an agent of the Association.~~]

(c) A commission must [~~shall~~] be paid on the basis of [~~pursuant to~~] a commission schedule set by the Governing Committee and approved by the commissioner [~~Commissioner~~]. The commission must [~~shall~~] be based on paid gross written premiums and subject to adjustment based on policy changes and cancellations. The agent must [~~shall~~] remit the gross premium collected on a FAIR Plan [~~an Association~~] policy to FAIR Plan [~~the Association~~], and FAIR Plan [~~the Association~~] will pay the commission.

(d) FAIR Plan must [~~The Association shall~~] establish minimum requirements and performance standards for agents who submit applications to FAIR Plan [~~the Association~~] or renew business in FAIR Plan [~~the Association~~]. These requirements and standards must [~~shall~~] be designed to ensure the efficient transmission of applications, forms, notices, and money from the agent to FAIR Plan [~~the Association~~] and vice [~~visa~~] versa; and [~~,~~] ensure the efficient operation of FAIR Plan [~~the Association~~], and the efficient and convenient servicing of applicants and policyholders. FAIR Plan [~~The Association~~] may require that agents demonstrate and certify compliance with these requirements and standards. FAIR Plan has [~~The Association shall have~~] the power to bar an agent from submitting new applications to or renewing business in FAIR Plan [~~the Association~~] if the agent refuses to demonstrate and certify compliance with these requirements and standards or the agent violates any of these requirements or standards. Such minimum requirements and performance standards are [~~shall be~~] binding upon any agent as a condition of the [~~such~~] agent's request for an inspection, submission of an application, receipt of commissions from FAIR Plan [~~the Association~~], or other act in connection with FAIR Plan [~~the Association~~]. FAIR Plan [~~The Association~~] may contract with agents who meet FAIR Plan's [~~the Association's~~] standards and may limit applications to FAIR Plan [~~the Association~~] to those agents. FAIR Plan is [~~The Association shall~~] not [~~be~~] required to appoint agents.

(e) FAIR Plan [~~The Association~~] may limit communications with agents to website communications only.

(f) An applicant may [~~only~~] apply to FAIR Plan only [~~the Association~~] through an agent.

§5.9914. Maximum Limits of Liability and Limitations.

(a) The maximum limits of liability for residential property insurance per location through FAIR Plan are [~~the Association shall be~~] $1,000,000 dwelling and [~~-~~] $500,000 contents. FAIR Plan [~~The Association~~] is authorized to reinsure some or all risks that are within or at these maximum limits.

(b) The maximum limit of liability for property owners' association insurance per location through FAIR Plan is $3,000,000 per structure, including business personal property. FAIR Plan is authorized to reinsure some or all risks that are within or at the maximum limit.

(c) FAIR Plan [~~(b) The Association~~] may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Insurance Code Chapter 2210, concerning Texas Windstorm Insurance Association. [~~Article 21.49.~~]

(d) FAIR Plan [~~(c) The Association~~] may issue a policy that includes coverage for an amount in excess of a liability limit set forth in subsection (a) of this section, if FAIR Plan [~~the Association~~] first obtains, from a reinsurer approved by the commissioner [~~Commissioner~~], reinsurance for the full amount of policy exposure above the limits for any given type of risk.

(e) [~~(d)~~] The premium charged by FAIR Plan [~~the Association~~] for the excess coverage must [~~shall~~] be equal to the amount of the reinsurance premium charged to FAIR Plan [~~the Association~~] by the reinsurer, plus any payment to FAIR Plan [~~the Association~~] that is approved by the commissioner [~~Commissioner~~].

§5.9915. Inspections.

(a) The underwriting rules must [~~shall~~] determine the inspection criteria for risks to be written by FAIR Plan [~~the Association~~]. FAIR Plan [~~The Association~~] may issue a policy of residential property insurance or property owners' association insurance on certain types of risks without an inspection in accordance with the underwriting rules.

(b) An inspection must [~~shall~~] be made only of property requiring an inspection to determine eligibility for FAIR Plan [~~Association~~] coverage in accordance with the underwriting rules. The inspection must [~~shall~~] be free of charge to the applicant. An inspection request may be made by the owner, their [~~his/her~~] representative, or an agent.

(c) All inspection reports must [~~shall~~] be in writing and must [~~shall~~] contain the information necessary to determine eligibility for coverage under FAIR Plan's [~~pursuant to the Association's~~] underwriting rules. After the inspection report has been completed, a copy of the completed inspection report and any photograph indicating the pertinent features of the building construction, maintenance, and occupancy must [~~shall~~] be sent within 10 [~~ten~~] days to FAIR Plan [~~the Association~~].

(d) The inspection report must [~~shall~~] contain information describing:

(1) occupancy;[~~,~~]

(2) information necessary for underwriting and rating;[~~,~~]

(3) construction; and

(4) physical deficiencies.

(e) If an interior inspection is necessary to determine eligibility of property described in an application submitted to FAIR Plan [~~the Association~~], the inspector must [~~shall~~] contact the applicant and arrange for the applicant to be present during the inspection. The inspector may [~~shall~~] not recommend correction of physical deficiencies or advise the applicant on whether FAIR Plan [~~the Association~~] will provide coverage.

(f) FAIR Plan must [~~The Association shall~~], as soon as practical but not to exceed 30 [~~thirty~~] days after receipt of the inspection report, advise the applicant and agent of the following.[~~:~~]

(1) If the inspector finds that the [~~residential~~] property meets the underwriting rules, FAIR Plan must [~~the Association shall~~] notify the applicant in writing and issue a policy or binder.

(2) FAIR Plan must [~~The Association shall~~] indicate to the applicant any condition charges that have been applied by FAIR Plan [~~the Association~~] in accordance with §5.9917(h) of this subchapter (relating to Application, Binder, Policy Issuance, Renewal, and Cancellation~~.~~).

(3) If the [~~residential~~] property is not insurable based on the underwriting rules, FAIR Plan must [~~the Association shall~~] notify the applicant in writing why the [~~residential~~] property is not insurable.

(g) If, at any time, the applicant makes improvements in the [~~residential~~] property or its condition that the applicant believes are sufficient to make the [~~residential~~] property insurable, an inspector must [~~shall~~] reinspect the [~~residential~~] property upon request. The applicant is [~~for residential property insurance shall be~~] eligible for one reinspection any time within 60 days after the initial inspection. If, upon reinspection, the [~~residential~~] property meets FAIR Plan's [~~the Association's~~] underwriting rules, FAIR Plan must [~~the Association shall~~] notify the applicant in writing and issue a policy or binder.

(h) If an inspection report shows that a property has unrepaired damages or is in violation of any building, housing, air pollution, sanitation, health, fire, or safety code, ordinance, or rule, or if an applicant otherwise has received written notice of any violation of a code, ordinance, or rule, the applicant must [~~shall~~] submit to FAIR Plan [~~the Association~~] a detailed plan that indicates the manner and estimated period of time in which the violation will be corrected or the damage repaired. FAIR Plan may [~~The Association shall~~] not provide coverage unless the necessary corrections are completed to the satisfaction of FAIR Plan. [~~the Association~~]

(i) FAIR Plan [~~The Association~~] may, for cause upon information or well-founded belief, without notice to the insured at any time during the policy term, inspect an insured property to determine [~~for the purpose of determining~~] whether the property meets the underwriting rules. FAIR Plan [~~The Association~~] need not afford an insured the opportunity to be present during a reinspection nor furnish the insured with a copy of a reinspection report, unless requested. Reinspections may also occur:

(1) upon change in type of occupancy;[~~,~~] or

(2) on [~~upon~~] a reasonable periodic schedule.

(j) FAIR Plan [~~The Association~~] may cancel or refuse to renew a policy on [~~upon~~] the basis of the reinspection report, according to the [~~in accordance with~~] policy terms and this plan of operation.

§5.9916. Application Forms, Underwriting Rules, Rates, Policy Forms, and Endorsements.

(a) FAIR Plan must [~~The Association shall~~] adopt application forms. The forms must [~~shall~~] be designed to obtain all of the information necessary for underwriting and rating the risk. The [~~Such~~] forms may also elicit additional information that FAIR Plan [~~the Association~~] may use to revise its rates, underwriting rules, policy forms, and endorsements. An application is considered complete when every question on the application form is answered fully, [~~and~~] is signed by a proposed named insured, and is submitted by the agent. FAIR Plan [~~The Association~~] may independently verify the information in an application or request additional information from the applicant or other sources.

(b) FAIR Plan must [~~The Association shall~~] file with the commissioner [~~Commissioner~~] for approval the underwriting rules for FAIR Plan [~~Association~~] policies before [~~prior to~~] use. The [~~Such~~] underwriting rules must [~~shall~~] determine whether a [~~residential~~] property is an insurable risk eligible for FAIR Plan [~~Association~~] coverage, and if eligible, what coverages, policy forms, and endorsements can be offered for that risk. The underwriting rules are [~~shall be~~] subject to the underwriting standards set forth in §§5.9914, 5.9915, and 5.9917 of this subchapter (relating to Maximum Limits of Liability and Limitations;[~~,~~] Inspections;[~~,~~] and Application, Binder, Policy Issuance, Renewal, and Cancellation) and any other requirements set forth in the underwriting rules. The [~~Such~~] rules must [~~shall~~] include under what circumstances FAIR Plan [~~the Association~~] may grant an agent permission to bind coverage.

(c) FAIR Plan must [~~The Association shall~~] file with the commissioner [~~Commissioner~~] for approval the proposed rates and supplemental rate information, including a manual of rating rules, to be used in connection with the issuance of FAIR Plan [~~Association~~] policies or endorsements. No policies or endorsements may [~~shall~~] be issued unless the commissioner [~~Commissioner~~] has approved the rates to be applied to the policy or endorsement.[~~:~~]

(1) FAIR Plan [~~The Association~~] rates must be set in an amount sufficient to carry all claims to maturity and to meet all expenses incurred in the writing and servicing of the business.

(2) The rate filing must also [~~shall additionally~~] provide for:

(A) premium installment payment plans, including a servicing fee for those policyholders electing to use such a plan; and

(B) deductible options, such as different dollar amounts or [~~,~~] different percentages of property coverage limits[~~,~~] that may vary by coverage or peril insured against.

(d) FAIR Plan must [~~The Association shall~~] file with the commissioner [~~Commissioner~~] for approval policy forms and endorsements before [~~prior to~~] use. The policy forms and endorsements that FAIR Plan [~~the Association~~] will offer to applicants are [~~will be~~] governed by its underwriting rules. FAIR Plan [~~The Association~~] may offer its policy forms on either an actual cash value or a replacement cost value basis, based on its underwriting rules. Residential property insurance [~~Association~~] policies may [~~shall~~] not cover businesses or commercial risks, even if they are operated in or from a residence. FAIR Plan [~~Association~~] policies may [~~shall~~] not cover motor vehicles.

§5.9917. Application, Binder, Policy Issuance, Renewal, and Cancellation.

(a) An agent must [~~shall~~] maintain and submit, at the request of FAIR Plan [~~the Association~~], written documentation that indicates all of the following. [~~that:~~]

(1) At least two insurance companies, not in the same holding company as defined in Insurance Code Chapter 823, concerning Insurance Holding Company Systems [~~Article 21.49-1~~], licensed to write

and actually writing residential property insurance or property owners' association insurance, as applicable, in Texas have declined to provide residential property insurance or property owners' association insurance (the names of the two insurance companies must [~~shall~~] be identified), and the applicant has not received a valid offer of comparable residential property insurance or property owners' association insurance from an insurance company licensed in Texas, not including any surplus lines insurers.[~~; and~~]

(2) There are no outstanding taxes, assessments, penalties, or charges with respect to the property to be insured, except those covered under a properly filed deferral affidavit in compliance with §33.06 of the [~~Property~~] Tax Code, concerning Deferred Collection of Taxes on Residence Homestead of Elderly or Disabled Person or Disabled Veteran.[~~; and~~]

(3) The applicant has not received written notice from an authorized public entity stating that the property is in violation of any building, housing, air pollution, sanitation, health, fire, or safety code, ordinance, or rule.

(b) FAIR Plan [~~The Association~~] may specify what documentation would fulfill the requirements of subsection (a)(1) - (3) of this section.

(c) FAIR Plan [~~The Association~~] is under no obligation to issue residential property insurance or property owners' association insurance unless the property constitutes [~~would constitute~~] an insurable risk in accordance with FAIR Plan's [~~the Association's~~] underwriting rules. FAIR Plan [~~The Association~~], in determining whether the property is insurable, may not consider [~~shall give no consideration to~~] the condition of surrounding property or properties, where such condition is not within the control of the applicant.

(d) FAIR Plan must [~~The Association shall~~] deliver a policy or binder to the agent upon acceptance of the risk. FAIR Plan must [~~The Association shall~~] pay the authorized commission to the agent.

(e) The effective date of coverage may [~~shall~~] be no earlier than the date and time that FAIR Plan [~~the Association~~] both accepts and binds the risk. The policy must [~~shall~~] be issued in the name of FAIR Plan [~~the Association~~], as insurer.

(f) FAIR Plan [~~The Association~~] may suspend acceptance [~~the taking~~] of applications in the state when issuance of binders and/or policies has been suspended by TWIA [~~the Texas Windstorm Insurance Association~~]. FAIR Plan [~~The Association~~] may also suspend acceptance [~~the taking~~] of applications when and in the part of the state it finds that an ongoing event threatens to create an imminent danger of catastrophic losses.

(g) The policy must [~~shall~~] be issued for a term of one year.

(h) If the property is found to be an insurable risk but the inspection reveals that there are one or more physical deficiencies, surcharges will be imposed according to [~~in conformity with~~] the rates and underwriting rules. If the physical deficiencies are corrected and verified, the surcharges must [~~shall~~] be revised.

(i) In accordance with the underwriting rules of FAIR Plan [~~the Association~~] except for subsection (k) of this section, at least 30 days before [~~prior to~~] the expiration of a [~~an~~] FAIR Plan [~~Association~~] policy, FAIR Plan must [~~the Association shall~~] do one of the following:

(1) send an offer to the policyholder with a copy to the agent to renew the FAIR Plan [~~Association~~] policy for a term of one year at the FAIR Plan [~~Association~~] rates that will be in force on the effective date of the renewal;

(2) send an offer to the policyholder with a copy to the agent to renew the FAIR Plan [~~Association~~] policy conditioned on [~~upon~~] a change in coverage, limits, and/or terms or conditions; or

(3) send a notice to the policyholder with a copy to the agent of nonrenewal of FAIR Plan [~~the Association~~] policy.

(j) If a payment for an estimated premium, annual premium, or any installment payment is refused or dishonored by the bank upon which it is drawn for any reason, coverage under FAIR Plan [~~the Association~~] policy must [~~shall~~] be cancelled for nonpayment of premium, and FAIR Plan [~~the Association~~] must [~~shall~~] send a notice of cancellation.

(k) Every two years starting with the second renewal, the policyholder must [~~shall~~] reapply for residential property insurance or property owners' association insurance, as applicable, in the voluntary market. If a diligent effort has been made and the policyholder is unable to obtain residential property insurance or property owners' association insurance, as evidenced by two current declinations from insurers licensed to write property insurance and actually writing residential property insurance or property owners' association insurance, as applicable, in Texas [~~the state~~], the policyholder will be eligible for renewal of FAIR Plan [~~Association~~] coverage. If a FAIR Plan [~~an Association~~] policyholder receives a valid offer of comparable residential property insurance or property owners' association insurance from an insurance company licensed by [~~the State of~~] Texas, other than a surplus lines carrier, then the policyholder is no longer eligible for coverage and FAIR Plan [~~the Association~~] may nonrenew the policy.

(l) FAIR Plan may [~~The Association shall~~] not issue a policy to an applicant if the applicant or any proposed named insured is indebted to FAIR Plan [~~the Association~~] on a prior FAIR Plan [~~Association~~] policy. If the new FAIR Plan [~~Association~~] policy has already been bound or issued, then FAIR Plan must [~~the Association shall~~] cancel that binder or policy and deduct from any return premium the amount that FAIR Plan [~~the Association~~] is owed from the prior FAIR Plan [~~Association~~] policy.

(m) Binders must [~~shall~~] be issued for a definite period, not to exceed 90 [~~ninety~~] days.

(n) Policies issued are not subject to flat cancellation and are subject to a minimum earned premium as stated in the underwriting rules.

(o) If an insurance policy will not be issued, the full earned premium must be charged.

(p) A binder terminates [~~shall terminate~~] upon the acceptance of a risk by FAIR Plan [~~the Association~~] and the payment of any premium due; or upon the cancellation of a risk and notice of reasons for the cancellation given to the applicant and agent.

(q) FAIR Plan may [~~The Association shall~~] not cancel a policy or binder issued by it, except:

(1) for a condition that [~~which~~] would have been grounds for nonacceptance of the risk had such condition been known to FAIR Plan [~~the Association~~] at the time of acceptance;

(2) for property that does not meet the underwriting rules;

(3) for nonpayment of premium, including nonpayment of premium on a prior FAIR Plan [~~Association~~] policy;

(4) for fraud;

(5) for material misrepresentation;

(6) for evidence of incendiarism by the insured or another acting on the insured's behalf; or

(7) at the written request of the [an] insured.

(r) FAIR Plan must [The Association shall] send notice of cancellation, stating the reasons for cancellation to an insured and agent. The cancellation takes [shall take] effect according to [in accordance with] the policy provisions.

(s) Any cancellation notice to an insured, except for the cancellation set forth in subsection (q)(7) of this section, must [shall] be accompanied by a statement that the insured has a right to appeal as provided in §5.9919 of this subchapter (relating to Right to Appeal).

(t) If a property meets all underwriting requirements, FAIR Plan must [the Association shall] calculate the actual annual premium. FAIR Plan must [The Association shall] remit a return premium to the applicant if the provisional binder premium exceeds the actual annual premium. FAIR Plan must [The Association shall] bill the applicant for additional premium if the actual annual premium exceeds the provisional binder premium.

(u) FAIR Plan must [The Association shall] cancel a binder on a pro rata basis. If an applicant requests cancellation of a binder, FAIR Plan must [the Association shall] cancel the binder on a pro rata basis.

§5.9930. Designated Area for Property Owners' Association Policies.

For purposes of Insurance Code §2211.1515, concerning Mandatory Property Owners' Association Policies in Certain Areas, the commissioner sets the designated area as the region extending 10 miles inland from the border of the TWIA catastrophe area, which consists of the geographical features of:

(1) the county lines of the 14 first tier coastal counties as designated in Commissioner Order No. 16878;

(2) Highway 146 where it intersects the cities of Seabrook and La Porte, as designated in Commissioner Order No. 95-1200;

(3) the municipal boundary of the City of Morgan's Point as designated in Commissioner Order No. 96-0380; and

(4) Highway 146 where it intersects the cities of Shoreacres and Pasadena as designated in Commissioner Order No. 96-1468.

§5.9931. Petition Requirements for Underserved Area for Property Owners' Association Insurance.

(a) A property owners' association may submit a petition to classify an area as an underserved area.

(b) Underserved areas must be located within the area designated in §5.9930 of this title (relating to Designated Area for Property Owners' Association Policies).

(c) The petition must:

(1) be submitted in writing to the Office of the Chief Clerk;

(2) provide contact information for the petitioner;

(3) clearly specify the area proposed as underserved, in a written description, a map, or other method;

(4) explain why the petitioner thinks the area is underserved;

(5) state the names of the petitioner's current and former insurers;

(6) provide:

(A) the names of insurers that have declined to provide coverage in the proposed underserved area; and

(B) detailed information about the risks, coverages, and coverage amounts the insurers are unwilling to offer;

(7) state the names and addresses of all property owners' associations that are located within a 1-mile radius of the petitioner's property owners' association and that are within the designated area; and

(8) include, if known:

(A) the names of insurers that have or are actively writing property coverage in the proposed underserved area;

(B) the total number of property owners' associations within the proposed underserved area;

(C) the physical addresses of any property owners' associations in the proposed underserved area; and

(D) the number of property owners' associations within the proposed underserved area that have been unable to get coverage.

(d) TDI may request additional information from the petitioner to help complete the review under §5.9932 of this title (relating to Petition Procedures for Underserved Area for Property Owners' Association Insurance).

§5.9932. Petition Procedures for Underserved Area for Property Owners' Association Insurance.

(a) TDI will review petitions for compliance with the specified requirements in §5.9931 of this title (relating to Petition Requirements for Underserved Area for Property Owners' Association Insurance). If compliant, TDI may gather additional information to determine whether to set the proposed area as underserved.

(b) TDI may schedule a public hearing and provide notice under Insurance Code §2211.051(b), concerning Establishment of FAIR Plan, to receive public input on the petition.

(c) The commissioner may determine that some, all, or none of the proposed area is underserved.

§5.9933. Determining Underserved Areas for Property Owners' Association Insurance.

(a) At any time after notice and hearing under Insurance Code §2211.051(b), concerning Establishment of FAIR Plan, whether in response to a petition or on the commissioner's own initiative, the commissioner may issue an order determining that all or part of the designated area is underserved.

(b) The order may include a deadline by which FAIR Plan must begin offering property owners' association policies within the underserved area.

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

Filed with the Office of the Secretary of State on June 10, 2024.

TRD-202402556
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 676-6555

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §§114.1, 114.2, 114.7, 114.50, 114.51, 114.53, 114.60, 114.64, 114.66, 114.72, 114.80 - 114.82, 114.84, and 114.87.

If adopted, amended §§114.1, 114.2, 114.7, 114.50, 114.51, 114.53, 114.80 - 114.82, 114.84, and 114.87 will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

Eighteen counties in Texas are subject to 30 TAC Chapter 114 inspection and maintenance (I/M) rules and the I/M SIP: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County. The commission adopted revisions to Chapter 114 and the I/M SIP on November 29, 2023, to implement an I/M program in Bexar County by no later than November 1, 2026 (Project Nos. 2022-026-114-AI and 2022-027-SIP-NR).

The I/M rules require the commission to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS) and require vehicles registered in I/M counties to pass an emissions inspection at the time of their annual safety inspection.

The 88th Texas Legislature, 2023, Regular Session, passed two bills that impact the Texas I/M program and require rulemaking and a revision to the I/M SIP. House Bill (HB) 3297 eliminates the mandatory annual vehicle safety inspection program for non-commercial vehicles, effective January 1, 2025. A rulemaking and SIP revision are required to remove references and requirements related to the state's safety inspection program and to revise several provisions in the SIP that are outlined in the bill. Senate Bill (SB) 2102 extends the initial registration and inspection period for rental vehicles from two years to three years. A rulemaking and SIP revision are required to allow one additional year of exemption from emissions inspections for rental vehicles.

At the November 29, 2023, Commissioners' Agenda meeting, a rulemaking and a SIP revision to implement I/M in Bexar County were adopted (Project Nos. 2022-026-114-AI and 2022-027-SIP-NR). The commission set an emissions inspection fee of $18.50 for the Bexar County I/M program. The commission referenced results from the June 30, 2020, Bexar County I/M Program Study Final Report (ERG No. 0433.00.005) that indicated an appropriate statewide fee range could be $18 to $22. The DFW and HGB program areas already have a fee of $18.50 set for emissions inspections, while the ARR area and El Paso County have a fee of $11.50. As required biennially by state statute in Texas Health and Safety Code (THSC) §382.202(f)(1), the March 29, 2024, Vehicle Emissions Inspection Program Test Fee Analysis for AirCheckTexas Program (ERG No. 0488.00.001) study (2024 I/M Fee Analysis) was completed to assess the adequacy of the I/M fee. The 2024 I/M Fee Analysis recommends a higher maximum fee than is currently allowed by rule, so the proposed rulemaking would raise the maximum fee allowed in the ARR area and El Paso County to be consistent with the maximum fee allowed in the other I/M counties. In addition to the proposed increase to $18.50 for the ARR area and El Paso County, the commission is also taking comment on setting a maximum fee in each program area up to $28.50, as informed by the 2024 I/M Fee Analysis.

The rulemaking will provide for an overall clean-up of the rule language to remove outdated program-related definitions, references, and requirements. The clean-up process will include revisions to the rule and SIP to repeal a provision of the I/M rule related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency that has not been approved as part of the Texas SIP by EPA.

Demonstrating Noninterference under Federal Clean Air Act (FCAA), §110(l)

Under FCAA, §110(l), EPA cannot approve a SIP revision if it would interfere with attainment of the National Ambient Air Quality Standard (NAAQS), reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The commission provides the following information to demonstrate why the proposed changes to the I/M program rules in Chapter 114 will not negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone or carbon monoxide (CO) NAAQS.

The proposed amendments would revise 30 TAC Chapter 114, Subchapters A and C to implement HB 3297, raise the maximum fee that inspection stations may charge for the emissions inspection, and provide for an overall clean-up of the rule language to remove outdated program-related definitions, references, and requirements. The requirement related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency, which would be repealed from the I/M rule, has not been approved by EPA as part of the Texas SIP. These amendments do not affect EPA-approved I/M program requirements; therefore, the proposed rulemaking would not negatively impact the state's progress towards attainment of the ozone or CO NAAQS.

The proposed amendments to Chapter 114 would also modify Subchapter C to implement SB 2102, extending the initial registration and inspection period for rental vehicles to three years. TCEQ and DPS have implemented an I/M program that meets or exceeds the low-enhanced I/M performance standard required by 40 Code of Federal Regulations (CFR), Part 51. To implement the new requirements for Texas I/M programs specified in SB 2102, TCEQ is proposing updates to the vehicle emissions testing programs for the DFW area, HGB area, ARR area, Bexar County, and El Paso County. The updated I/M program's implementation year is anticipated to be 2026. Evaluating whether an updated I/M program meets EPA's enhanced performance standard requires demonstrating that the existing program emission rates for nitrogen oxides and volatile organic compounds do not exceed the benchmark program's emission rates. The benchmark program's emission rates include a 0.02 grams per mile buffer for each pollutant. Using the requirements in EPA guidance document, *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (EPA-420-B-22-034, October 2022), TCEQ performed the required performance standard modeling (PSM) analysis of the five program

areas. The analysis demonstrates that the updated DFW area, HGB area, ARR area, Bexar County, and El Paso County I/M program emission rates do not exceed the performance standard benchmark emission rates for all counties required to operate an I/M program within these areas. Therefore, the I/M program performance requirement is met for the updated I/M program in all areas. Additionally, the PSM analysis indicates that ozone precursor emission impacts due to the proposed I/M program updates will be negligible and would not be expected to interfere with any applicable FCAA requirement concerning attainment and reasonable further progress.

Data from the Texas Department of Motor Vehicles (DMV) indicate that the number of rental vehicles titled in Texas that would be exempt under this provision is approximately 76,000. This is 0.3% of the overall Texas fleet. Additionally, these vehicles are expected to be the newest model year vehicles and, as such, are expected to meet the required emissions standards since newer vehicles typically pass emissions inspections at higher rates than older vehicles. This proposed revision due to the passage of SB 2102 would not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS.

Section by Section Discussion

The proposed amendments would repeal obsolete definitions, revise the I/M program rules to provide for implementation of HB 3297 and SB 2102, raise the maximum fee inspection stations are allowed to charge for an emissions inspection, and repeal a state I/M requirement from the rule and state-adopted SIP to be consistent with the EPA-approved federally enforceable Texas SIP.

The commission also proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

Subchapter A: Definitions

§114.1. Definitions

The proposed rulemaking would remove obsolete definitions in §114.1 that have been affirmed by staff as no longer necessary and would revise an additional definition. The obsolete definitions were associated with outdated references to safety inspections and first vehicle registration that are not used in or applicable to current rules in Chapter 114 as proposed. The definitions proposed for removal are first safety inspection certificate and first vehicle registration. The definition for single sticker transition date, which was needed temporarily to implement HB 2305, 83rd Texas Legislature, 2013, Regular Session, is not being proposed for removal in this rulemaking because it is referenced in Chapter 114, Subchapter B, which is not open for this rulemaking. The commission may consider removing this outdated definition in a future rulemaking. The proposed revision to the definition for vehicle registration insignia sticker would remove the reference to the single sticker transition date as that date has passed and the reference is no longer necessary. The remaining definitions would be renumbered as appropriate.

§114.2. Inspection and Maintenance Definitions

The proposed rulemaking would remove obsolete definitions in §114.2 that have been affirmed by staff as no longer necessary and would revise additional definitions. The obsolete definitions were associated with outdated test sequences and definitions that are not used in or applicable to current rules in Chapter 114 as proposed. The definitions proposed for removal are acceleration simulation mode (ASM-2) test, consumer price index, controller area network (CAN), low-volume emissions inspection station, two-speed idle (TSI) inspection and maintenance test, and uncommon part. The proposed revision to the definition for testing cycle would remove the reference to the single sticker transition date as previously defined.

The program area definitions in existing §114.2(10), which would be renumbered to §114.2(6), would be revised to combine the DFW program area definition in existing subparagraph (A) with the extended DFW program area definition in existing subparagraph (D) into a revised subparagraph (A). Existing subparagraph (D) would be removed, and existing subparagraph (E) would be renumbered as (D). These proposed amendments to the definition for program area would not change the meaning of the I/M program areas but would bring together all of the DFW area counties under one subparagraph for clarity.

The proposed revisions would add a definition for rental vehicle to accommodate proposed rule amendments associated with implementation of SB 2102. The remaining definitions would be renumbered as appropriate.

§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions

The proposed revisions to §114.7 would update the definitions of automobile dealership, proof of transfer, and replacement vehicle. The statutory reference for automobile dealership is not valid; therefore, the proposed revision would replace that term with dealer to match the updated statutory reference in Texas Transportation Code (TTC) §503.001(4). Proposed revisions would also modify the definition to reference a person instead of a business, also to match the updated statutory reference. The proposed revision to proof of transfer would update the term automobile dealer to dealer. The proposed revision to replacement vehicle would modify the definition by removing the requirement that a vehicle have a passing safety inspection to be eligible as a replacement vehicle since the state's mandatory annual vehicle safety inspection program for noncommercial vehicles will be eliminated on January 1, 2025. The definitions would be renumbered as appropriate.

Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; And Early Action Compact Counties

§114.50. Vehicle Emissions Inspection Requirements

The proposed revisions to §114.50 would add an emissions inspection exception for rental vehicles, combine I/M program applicability subsections, simplify language concerning test procedures, remove references to the extended DFW program area, remove obsolete references to safety inspections, remove references to the single sticker transition date, and repeal a provision that is not part of the EPA-approved I/M SIP for Texas.

Subsection (a) would be revised to add an exception for rental vehicles under emissions inspection applicability provisions that extends their initial inspection period to three years. This amendment is proposed as a result of the passage of SB 2102. Since SB 2102 became effective on September 1, 2023, rental vehicles in Texas may already use this exception and skip the re-

quirement to receive an emissions inspection in year two. TCEQ proceeded with rulemaking in due diligence to align the TAC with THSC, §382.202(d-2). Due to passage of HB 3297, which eliminates the mandatory annual vehicle safety inspection program for noncommercial vehicles, the amendments to subsection (a) would include replacing references to safety inspection and safety inspection facilities with references to emissions inspection and inspection facilities.

The proposed revisions would amend §114.50(a)(1) - (4) to combine the I/M program test procedure and applicability provisions for the DFW program area, the HGB program area, and El Paso County under proposed §114.50(1) for clarity and readability. The proposed revision would remove subparagraphs (B) and (C) as the acceleration simulation mode (ASM) test is no longer used and only the on-board diagnostic (OBD) test applies now. The proposed revisions would remove the references to the extended DFW program area in paragraphs (a)(2), (b)(1), (b)(3), and (b)(6) as that definition is no longer representative of the DFW program area. The proposed revisions would remove references to safety inspections in paragraphs (b)(1), (d)(1), and (d)(2) that will no longer be applicable to current rules in Chapter 114 due to the passage of HB 3297. The proposed revisions will remove the references to the single sticker transition date in paragraphs (b)(1) and (d)(2) as that date has passed and the references are no longer necessary. Existing §114.50(a)(5) would be renumbered as §114.50(a)(2).

This proposed rulemaking would also remove §114.50(b)(2) related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency. The provision was first adopted in a 1999 rulemaking, and EPA has not approved this requirement as part of the SIP. EPA did not include the provision in its final approval, published on November 14, 2001 (66 FR 57261). EPA indicated in an April 15, 2014 (79 FR 21179) action that it "will not approve or disapprove the specific requirements of 30 TAC §114.50(b)(2)" because "EPA did not require the state to implement or adopt this reporting requirement dealing with federal installation within I/M areas at the time of program approval." Thus, removing the provision would align the I/M program rules in Subchapter C, Division 1 with federal program requirements and the I/M rules in the EPA-approved SIP. Since existing paragraph (b)(2) would be removed, subsequent paragraphs under subsection (b) would be renumbered.

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers

The proposed revision to §114.51 would update the hyperlink location for the most recent version of the "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program."

§114.53. Inspection and Maintenance Fees

The proposed revisions to §114.53 would combine I/M program fee requirements for several areas, add abbreviations, remove reference to the single sticker transition date, remove reference to the extended DFW program area, and remove language concerning fees associated with the outdated ASM test.

As with proposed amendments to §114.50, provisions in §114.53(a)(1) - (3) would be revised to combine I/M program fee provisions for the DFW program area, the HGB program area, and El Paso County under a revised §114.53(a)(1). Existing paragraphs (2) and (3) would be removed, and existing §114.53(a)(4) would be renumbered as proposed §114.53(a)(2). The proposed maximum fee for an emissions test conducted in El Paso County would be increased to $18.50. The maximum fee for the DFW and HGB program areas are already set at $18.50, so amended §114.53(a)(1) would only substantively impact the El Paso County I/M program. In addition to the proposed increase to $18.50 for El Paso County, the commission is also taking comment on setting a maximum fee in each program area up to $28.50, as informed by the 2024 I/M Fee Analysis.

The proposed revisions to §114.53(d) would remove reference to the single sticker transition date as that date has passed and the reference is no longer necessary. Reference to the extended DFW program area in §114.53(d)(2) would be removed as that definition is no longer necessary for describing the DFW area counties subject to I/M requirements, and language concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fees in §114.53(d)(2)(A) and (B) and §114.53(d)(3)(A) and (B) would be revised to remove references to the outdated ASM test and associated LIRAP fee for that test.

§114.60. Applicability for LIRAP

The proposed revisions to §114.60 would update references to statute that were amended by SB 1303, 82nd Texas Legislature, 2011, Regular Session. SB 1303 amended THSC §382.209(c)(1) by updating a reference of TTC §§502.274 or 502.275 to TTC §§504.501 or 504.502. SB 1303 was a general code update bill prepared by the Texas Legislative Council to make non-substantive amendments to enacted codes. TTC §§502.274 and 502.275 had been removed from statute when HB 2971 repealed TTC Chapter 502, Subchapter F during the 78th Texas Legislature, 2003, Regular Session. The proposed revisions would change the reference to TTC §502.274 in §114.60(c)(4) to TTC §504.501 and remove "as defined by" since the new reference is not in a definitions section in the statute. The proposed revisions would change the reference to TTC §502.275 in §114.60(c)(4) to TTC §504.502 and remove "as defined by" since the new reference is not a definitions section in the statute.

§114.64. LIRAP Requirements

The proposed revisions to §114.64 would remove obsolete requirements related to safety inspections and the ASM test, incorporate changes caused by renumbering, and update a term to match changes made to definitions. The proposed revisions to §114.64(b)(4) would remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297. Subsequent paragraphs under subsection (b) would be renumbered. The proposed revisions to §114.64(c)(1) incorporate changes caused by renumbering in subsection (b), remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297 and by implementation of the state's single sticker registration system, and remove redundant language that already appears in §114.64(b)(6). The proposed revisions to §114.64(e) would remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297. The proposed revisions would remove an obsolete requirement related to the outdated ASM test and renumber subsequent paragraphs under subsection (c). The proposed revisions to §114.64(f) and (f)(1) would change the term "automobile dealership(s)" to "dealer(s)" to match the update made in §114.7.

§114.66. Disposition of Retired Vehicle

The proposed revisions in §114.66(d) would change the term "automobile dealer" to "dealer" to match the update made in §114.7.

§114.72. Local Advisory Panels

The proposed revisions to §114.72 would update obsolete references to statute, update a term to match changes made to definitions, and remove the provision that local advisory panels may consist of representatives from safety inspection facilities. The proposed revisions to §114.72(a)(4) would update references to statute that were amended by SB 1303, 82nd Texas Legislature, 2011, Regular Session to match the updates made in §114.60. The proposed revisions would change the term "automobile dealership" to "dealer" in §114.72(c)(1) to match the update made in *§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.* The proposed revisions would remove the provision in §114.72(c)(3) that local advisory panels may consist of representatives from safety inspection facilities due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297 and instead allow that they may consist of representatives from emissions inspection facilities.

§114.80. Applicability

The proposed revisions to §114.80 would add an emissions inspection exception for rental vehicles and remove obsolete references to safety inspections. The proposed revisions to §114.80(c) would add an exception for rental vehicles under emissions inspection applicability provisions that extends their initial inspection period to three years. This amendment is proposed as a result of the passage of SB 2102. Since SB 2102 became effective on September 1, 2023, rental vehicles in Texas may already use this exception and skip the requirement to receive an emissions inspection in year two. TCEQ proceeded with rulemaking in due diligence to align the TAC with THSC, §382.202(d-2). Due to passage of HB 3297, which eliminates the mandatory annual vehicle safety inspection program for noncommercial vehicles, the amendments to §114.80(c) would include replacing references to safety inspection and safety inspection facilities with references to emissions inspection and inspection facilities.

§114.81. Vehicle Emissions Inspection Requirements

The proposed revisions in §114.81 would remove the references to the two-speed idle (TSI) test for pre-1996 vehicles that are no longer applicable in the program. The proposed revision would remove paragraph (2) and revise paragraphs (1) and (3) as the TSI test is no longer used and only the OBD test applies. The paragraphs in the section would be renumbered as appropriate.

§114.82. Control Requirements

The proposed revisions in §114.82 would remove references to the safety inspection, the single sticker transition date, 1996 and newer model year vehicles, and the Texas Motor Vehicle Commission Code, and repeal a subsection that corresponds to a section not approved by EPA as part of the SIP. Section 114.82(a)(1) would be removed since it only pertains to requirements prior to the single sticker transition date as that date has passed and those requirements are no longer necessary. The proposed revisions to §114.82(a)(2) would remove the reference to the single sticker transition date and safety inspection requirements due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles that resulted from the passage of HB 3297. Paragraphs of §114.82(a) would be renumbered as appropriate.

The proposed rulemaking would also remove §114.82(b) as it corresponds to §114.50(b)(2), related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency, which EPA has not approved as part of the SIP. Removing the provision would align the I/M program rules in Subchapter C, Division 1 with federal program requirements and the I/M rules in the EPA-approved SIP. Since existing subsection (b) would be removed, subsequent subsections §114.82(c) through (h) under would be renumbered as §114.82(b) through (g). The proposed revisions to §114.82(c) would change the term "dealership(s)" to "dealer(s)" to match the update made in *§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.* The proposed revisions to §114.82(g) would remove the reference to the Texas Motor Vehicle Commission Code as it is no longer applicable and remove the reference to 1996 and newer model year vehicles, as this age range of vehicles no longer needs to be specified.

§114.84. Prohibitions

The proposed revisions in §114.84 would remove obsolete references to safety inspections and the single sticker transition date that are no longer applicable to current rules in Chapter 114. The proposed revision to §114.84(a) would remove the reference to the annual safety inspection due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles that resulted from the passage of HB 3297. The proposed revision to §114.84(b) would remove an obsolete reference to the single sticker transition date that is no longer applicable as that date has passed and the reference is no longer necessary.

§114.87. Inspection and Maintenance Fees

The proposed revisions in §114.87 would remove obsolete references to the TSI test and the single sticker transition date and would raise the maximum fee for each OBD test in Travis and Williamson Counties. Subsections (a) and (d) would be revised to remove references to the single sticker transition date that are no longer applicable as that date has passed and the references are no longer necessary. The proposed revisions would remove references to the obsolete TSI test in revise §114.87(a) as it is no longer used and only the OBD test applies. Additionally, the proposed maximum fee allowed for each on-board diagnostic test in Travis and Williamson Counties in §114.87(a) would be increased to $18.50; however, the commission is also taking comment on setting a maximum fee in each program area up to $28.50, as informed by the 2024 I/M Fee Analysis.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for state and local government as a result of administration or enforcement of the proposed rule. The fiscal implications of this rulemaking are presented in terms of the highest economic impact, which is calculated based on the highest fee within the range recommended in the 2024 I/M Fee Analysis in all I/M program area counties. The rulemaking will not result in fiscal implications for TCEQ, however.

The agency estimates the implementation of amendments to the proposed rule in §114.53 and §114.87 would result in increased costs for state and local entities that rely on private businesses to inspect gasoline-powered vehicles that are 2-24 model years old in their fleets. A fee of $18.50 to $28.50 per annual vehicle inspection is being considered in this rulemaking for vehicles registered in each of the counties subject to the I/M rules, including counties in the DFW area, HGB area, ARR area, El Paso County, and Bexar County. Inspection fees are currently set at a maximum of $18.50 annually per vehicle for DFW and HGB counties, and a fee of this amount is set to be implemented in Bexar County on November 1, 2026. Inspection fees are currently set at a maximum of $11.50 annually per vehicle for ARR counties and El Paso County. Therefore, this rulemaking could result in an increase of up to $10 per inspection for vehicles in DFW and HGB counties, an increase of up to $10 per inspection in Bexar County beginning on November 1, 2026, and an increase of up to $17 per inspection for vehicles in ARR counties and El Paso County. County-specific data on governmental vehicles is not available, but it is estimated that 2,373 vehicles from state entities would be affected by this rulemaking, and up to 11,300 state and local governmental entities would be affected.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance with state law, specifically HB 3297 and SB 2102 from the 88th Texas Legislature, 2023, Regular Session. Setting the fee at a value that is informed by the results of the recent fee analysis will improve the likelihood that inspection services will continue to be provided by businesses and economic impacts to individuals are minimized.

Implementation of amendments to the proposed rule in §114.53 and §114.87 would increase the amount businesses are allowed to charge by up to $10 per inspection for qualifying vehicles in DFW and HGB counties, up to $10 per inspection in Bexar County beginning on November 1, 2026, and up to $17 per inspection for qualifying vehicles in ARR counties and El Paso County. Currently, there are 4,187 stations that conduct these inspections in DFW and HGB counties, and 730 stations that would be affected in ARR counties and El Paso County. As the I/M program has not yet begun in Bexar County, no such stations exist that conduct these types of inspections. However, there are currently 638 stations in Bexar County that conduct safety-only inspections which could join the emissions inspection program.

The proposed rulemaking would also result in cost savings for businesses that own rental fleets in counties that are subject to the I/M rules. Amendments to §114.50 and §114.80, would extend the initial registration and inspection period for rental vehicles from two to three years. Therefore, owners of rental fleets would experience a cost savings in the amount of the fee per vehicle inspection in the third year after the model year for the vehicle.

Individuals that have vehicles that are subject to emissions inspections would be responsible for paying the increased fees in this rulemaking. Over 9.8 million vehicles would be subject to these inspections in DFW counties, HGB counties, and Bexar County, and over 1.6 million vehicles would be affected in ARR counties and El Paso County.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination [if full RIA not required]

The commission reviewed the proposed rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would 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 proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in 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 proposed rulemaking's purpose is to remove references and requirements related to the state's safety inspection program due to the passage of HB 3297 and revise several provisions in the SIP that are outlined in the bill; and allow one additional year of exemption from emissions inspections for rental vehicles due to the passage of SB 2102 to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone or CO mandated by 42 United States Code (U.S.C.) §7410, FCAA, §110. The requirement to implement and enforce I/M programs is specifically required for certain nonattainment areas by the FCAA, and the proposed revisions to 30 TAC Chapter 114 would be used as a control strategy for demonstrating attainment of the ozone or CO NAAQS in the specific areas designated as nonattainment in Texas, as discussed elsewhere in this preamble.

The proposed rulemaking implements requirements of the FCAA, 42 U.S.C. §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 U.S.C. §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, I/M programs are specifically required by the FCAA. The SIP must also 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 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 when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. This flexibility allows states, affected industry, and the public to collaborate on the best methods for 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 U.S.C. §7410. States are not free to ignore the requirements of 42 U.S.C. §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

If a state does not comply with its obligations under 42 U.S.C. §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 U.S.C. §7410(m) or mandatory sanctions under 42 U.S.C. §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 U.S.C. §7410, FCAA, §110(c).

As discussed earlier in this preamble, states are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the ozone or CO NAAQS or comply with the specific requirements for I/M programs on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by 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, the commission 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." The commission 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.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but I/M programs are specifically required by the FCAA; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the required attainment deadlines and that comply with EPA requirements for I/M programs. Because of the ongoing need to meet federal requirements, the commission 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 the commission 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 the commission 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 to require the full RIA for rules that are extraordinary in nature. While the proposed rules 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 proposed rules do not impose burdens greater than required to demonstrate attainment of the ozone or CO NAAQS and comply with the requirements for I/M programs as discussed elsewhere in this preamble.

For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law. The commission 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).) The commission'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, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to attain the ozone or CO NAAQS and comply with requirements for I/M programs and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, 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 proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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

Takings Impact Assessment

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.

The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, Chapter 2007. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of I/M programs and control strategies necessary to attain and maintain the NAAQS for ozone or CO mandated by 42 U.S.C. §7410, FCAA, §110. Therefore, Chapter 2007 does not apply to this proposed rulemaking 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 proposed rulemaking implements requirements of FCAA, 42 U.S.C. §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 U.S.C. §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, I/M programs are specifically required by the FCAA. 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 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. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for 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 U.S.C. §7410. States are not free to ignore the requirements of 42 U.S.C. §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 U.S.C. §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 U.S.C. §7410(m) or mandatory sanctions under 42 U.S.C. §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 U.S.C. §7410, FCAA, §110(c).

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement for states to create plans including control strategies to attain and maintain the NAAQS, as discussed elsewhere in this preamble. The proposed rules would assist in achieving the timely attainment of the ozone or CO NAAQS and reduced public exposure to ozone or CO. The NAAQS are promulgated by the EPA in accord with the FCAA, which requires the EPA to identify and list air pollutants that "cause[s] or contribute[s] to air pollution which may reasonably

be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diversion mobile or stationary sources," as required by 42 U.S.C. §7408. For those air pollutants listed, the EPA then is required to issue air quality criteria identifying the latest scientific knowledge regarding on adverse health and welfare effects associated with the listed air pollutant, in accord with 42 U.S.C. §7408. For each air pollutant for which air quality criteria have been issued, the EPA must publish proposed primary and secondary air quality standards based on the criteria that specify a level of air quality requisite to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air, as required by 42 U.S.C. §7409. As discussed elsewhere in this preamble, states have the primary responsibility to adopt plans designed to attain and maintain the NAAQS.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal 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 proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007. For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Note: §29.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Section 29.11(b)(4) applies to all other actions. 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 and SIP revision would ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plan and is, therefore, consistent with CMP goals and policies.

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

Announcement of Hearing

The commission will offer a virtual public hearing on this proposal on July 24, 2024, at 7:00 p.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, July 17, 2024. To register for the hearing, please email siprules@tceq.texas.gov and provide the following information: your name, your affiliation, your e-mail address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Tuesday, July 22, 2024, to those who register for the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search.* File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-013-114-AI. The comment period closes on July 29, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact David Serrins, Air Quality Planning Section, (512) 239-1954.

SUBCHAPTER A. DEFINITIONS

30 TAC §§114.1, 114.2, 114.7

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.1, 114.2, and 114.7 are proposed under the authority of Texas Water Code (TWC) §5.103, concerning Rules; TWC §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC §7.0002, 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 (TCAA).

The amendments to 30 TAC Chapter 114 are also proposed 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 §382.051, concerning Permitting Authority of the Commission 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 TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state im-

plementation plan (SIP) is not required prior to February 1, 2005; THSC §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

§114.1. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Dual-fuel vehicle--Any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not a mixture of the two.

(2) Emergency vehicle--A vehicle defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1).

(3) Emissions--The emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, particulate, or any combination of these substances.

~~[(4) First safety inspection certificate--Initial Texas Department of Public Safety (DPS) certificates issued through DPS-certified inspection stations for every new vehicle found to be in compliance with the rules and regulations governing safety inspections. Beginning on the single sticker transition date as defined in this section, the safety inspection certificates will no longer be used.]~~

~~[(5) First vehicle registration--Initial vehicle registration insignia sticker issued through the Texas Department of Motor Vehicles for every new vehicle found to be in compliance with the rules and regulations governing vehicle registration prior to the single sticker transition date as defined in this section and vehicle registration and safety inspections beginning on the single sticker transition date].~~

(4) [~~(6)~~] Gross vehicle weight rating--The value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration and includes the weight the vehicle can carry or draw.

(5) [~~(7)~~] Law enforcement vehicle--Any vehicle controlled by a local government and primarily operated by a civilian or military police officer or sheriff, or by state highway patrols, or other similar law enforcement agencies, and used for the purpose of law enforcement activities including, but not limited to, chase, apprehension, surveillance, or patrol of people engaged in or potentially engaged in unlawful activities.

(6) [~~(8)~~] Single sticker transition date--The transition date of the single sticker system is the later of March 1, 2015, or the date that the Texas Department of Motor Vehicles (DMV) and the Texas Department of Public Safety (DPS) concurrently implement the single sticker system required by Texas Transportation Code, §502.047.

(7) [~~(9)~~] Texas Inspection and Maintenance State Implementation Plan--The portion of the Texas state implementation plan that includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission and approved by the EPA. A copy of the Texas Inspection and Maintenance State Implementation Plan is available at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 206, Austin, Texas 78711-3087.

(8) [~~(10)~~] Vehicle registration--Vehicle characteristics, corresponding owner information, and registration expiration date contained in the DMV [~~Texas Department of Motor Vehicles~~] registration system.

(9) [~~(11)~~] Vehicle registration insignia sticker--The sticker issued through the DMV [~~Texas Department of Motor Vehicles (DMV)~~] or county tax assessor-collector for a vehicle compliant with the DMV regulations. The [~~Beginning on the single sticker transition date as defined in this section, the~~] vehicle registration insignia sticker, a current valid vehicle inspection report (VIR) [~~VIR~~], or other form of proof authorized by the DPS or the DMV will be used as proof of compliance with inspection and maintenance program requirements, the DMV's rules and regulations governing vehicle registration, and the DPS's [~~Texas Department of Public Safety's~~] rules and regulations governing [~~safety~~] inspections.

§114.2. Inspection and Maintenance Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following words and terms, when used in Subchapter C of this chapter (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties), have the following meanings, unless the context clearly indicates otherwise.

~~[(1) Acceleration simulation mode (ASM-2) test--An emissions test using a dynamometer (a set of rollers on which a test vehicle's tires rest) that applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:]~~

~~[(A) the 50/15 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 15 miles per hour (mph) on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 50% of the vehicle available horsepower; and]~~

~~[(B) the 25/25 mode--in which the vehicle is tested for 90 seconds upon reaching and maintaining a constant speed of 25 mph on a dynamometer that simulates acceleration at a rate of 3.3 mph per second by using 25% of the vehicle available horsepower.]~~

~~[(2) Consumer price index--The consumer price index for any calendar year is the average of the consumer price index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of the calendar year.]~~

~~[(3) Controller area network (CAN)--A vehicle manufacturer's communications protocol that connects to the various electronic modules in a vehicle. CAN provides one protocol that collects information from the vehicle's electronic systems including the on-board diagnostics (OBD) emissions testing system. The United States Environmental Protection Agency requires the CAN protocol to be installed in OBD-compliant vehicles beginning with some model year 2003 vehicles and phasing in to all OBD-compliant vehicles by the 2008 model year.]~~

[(4) Low-volume emissions inspection station--A vehicle emissions inspection station that meets all criteria for obtaining a low-volume waiver from the Texas Department of Public Safety.]

(1) [(5)] Motorist--A person or other entity responsible for the inspection, repair, and maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees.

(2) [(6)] On-board diagnostic (OBD) system--The computer system installed in a vehicle by the manufacturer that monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards. All references to OBD should be interpreted to mean the second generation of this equipment, sometimes referred to as OBD II.

(3) [(7)] On-road test--Utilization of remote sensing technology to identify vehicles operating within the inspection and maintenance program areas that have a high probability of being high-emitters.

(4) [(8)] Out-of-cycle test--Required emissions test not associated with vehicle safety inspection testing cycle.

(5) [(9)] Primarily operated--Use of a motor vehicle greater than 60 calendar days per testing cycle in an affected county. Motorists shall comply with emissions requirements for such counties. It is presumed that a vehicle is primarily operated in the county in which it is registered.

(6) [(10)] Program area--County or counties in which the Texas Department of Public Safety, in coordination with the commission, administers the vehicle emissions inspection and maintenance program contained in the Texas Inspection and Maintenance State Implementation Plan. These program areas include:

(A) the Dallas-Fort Worth program area, consisting of the following counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant;

(B) the El Paso program area, consisting of El Paso County;

(C) the Houston-Galveston-Brazoria program area, consisting of Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties; and

[(D) the extended Dallas-Fort Worth program area, consisting of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties became part of the program area as of May 1, 2003; and]

(D) [(E)] the Bexar County program area, consisting of Bexar County.

(7) Rental vehicle-- A motor vehicle for which a rental certificate has been furnished as provided by Texas Tax Code §152.061.

(8) [(11)] Retests--Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle.

(9) [(12)] Testing cycle--The [Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), the annual cycle commencing with the first safety inspection certificate expiration date for which a motor vehicle is subject to a vehicle emissions inspection or beginning on the single sticker transition date, the] annual cycle commencing with the first vehicle registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection.

[(13) Two-speed idle (TSI) inspection and maintenance test--A measurement of the tailpipe exhaust emissions of a vehicle while the vehicle idles, first at a lower speed and then again at a higher speed.]

[(14) Uncommon part--A part that takes more than 30 days for expected delivery and installation where a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers will exceed the remaining time prior to expiration of:]

[(A) the vehicle safety inspection certificate prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions);]

[(B) the vehicle registration beginning on the single sticker transition date as defined in §114.1 of this title; or]

[(C) the 30-day period following an out-of-cycle inspection.]

§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this chapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter C, Division 2 of this chapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) have the following meanings, unless the context clearly indicates otherwise.

(1) Affected county--A county with a motor vehicle emissions inspection and maintenance program established under Texas Transportation Code, §548.301.

[(2) Automobile dealership--A business that regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Texas Transportation Code, §503.301. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.]

(2) [(3)] Car--A motor vehicle, other than a golf cart, truck or bus, designed or used primarily for the transportation of persons. A passenger van or sports utility vehicle may be considered a car under this section.

(3) [(4)] Commercial vehicle--A vehicle that is owned or leased in the regular course of business of a commercial or business entity.

(4) Dealer--A person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location as defined under Texas Transportation Code, §503.001. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer.

(5) Destroyed--Crushed, shredded, scrapped, or otherwise dismantled to render a vehicle, vehicle's engine, or emission control components permanently and irreversibly incapable of functioning as originally intended.

(6) Dismantled--Extraction of parts, components, and accessories for use in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program or sold as used parts.

(7) Electric vehicle--A motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(8) Emissions control equipment--Relating to a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements). If the vehicle is so equipped, these include: exhaust gas recirculation system, power control module, catalytic converter, oxygen sensors, evaporative purge canister, positive crankcase ventilation valve, and gas cap.

(9) Engine--The fuel-based mechanical power source of a motor vehicle that is subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements), which includes the crankcase, cylinder block, and cylinder head(s) and their initial internal components, the oil pan and cylinder head valve covers, and the intake and exhaust manifolds.

(10) Fleet vehicle--A motor vehicle operated as one of a group that consists of more than ten motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(11) Hybrid vehicle--A motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(12) LIRAP--Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(13) LIRAP fee--The portion of the vehicle emissions inspection fee that is required to be remitted to the state at the time of annual vehicle registration, as authorized by Texas Health and Safety Code, §382.202, in counties participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

(14) LIRAP fee termination date--The first day of the month for the month that the Texas Department of Motor Vehicles issues registration notices without the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fee, as defined in this section, in a participating county opting out of the LIRAP.

(15) LIRAP opt-out effective date--The date upon which a county that was participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) becomes a non-participating county, which occurs when the grant contract between the county and the executive director, established in §114.64(a) of this title (relating to LIRAP Requirements), is ended, but no earlier than the LIRAP fee termination effective date.

(16) Motor vehicle--A fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person, persons, or property on a public highway.

(17) Natural gas vehicle--A motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(18) Non-participating county--An affected county that has either:

(A) not opted into the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209; or

(B) opted out of the LIRAP according to the procedures specified in §114.64(g) of this title (relating to LIRAP Requirements) and has been released from all program requirements, including assessment of the LIRAP fee as defined in this section and participation in LIRAP grant programs.

(19) Participating county--An affected county in which the commissioners court by resolution has chosen to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) authorized by Texas Health and Safety Code, §382.209. An affected county that is in the process of opting out of the LIRAP is considered a participating county until the LIRAP opt-out effective date as defined in this section.

(20) Proof of sale--A notice of sale or transfer filed with the Texas Department of Motor Vehicles as required under Texas Transportation Code, §503.005, or if unavailable, an affidavit from the selling dealer or documents approved by the commission.

(21) Proof of transfer--A TCEQ form that identifies the vehicle to be destroyed and tracks the transfer of the vehicle to the recycler from the participating county, [~~automobile~~] dealer, and dismantler.

(22) Qualifying motor vehicle--A motor vehicle that meets the requirements for replacement in §114.64 of this title (relating to LIRAP Requirements).

(23) Recognized emissions repair facility--An automotive repair facility as provided in 37 Texas Administrative Code §23.51 (relating to Vehicle Emissions Inspection Requirements).

(24) Recycled--Conversion of metal or other material into raw material products that have prepared grades; an existing or potential economic value; and using these raw material products in the production of new products.

(25) Replacement vehicle--A vehicle that is in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-17; has a gross vehicle weight rating of less than 10,000 pounds; have an odometer reading of not more than 70,000 miles; the total cost does not exceed $35,000 and up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17; and has passed a Texas Department of Public Safety motor vehicle [~~safety inspection or safety and~~] emissions inspection within the 15-month period before the application is submitted.

(26) Retrofit--To equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(27) Retrofit equipment--Emissions-reducing equipment designed to reduce air emissions and improve air quality that is approved by the United States Environmental Protection Agency and is installed after the manufacture of the original engine, exhaust, or fuel system.

(28) Total cost--The total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as the sales price in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as the sales price on the application for Texas Certificate of Title if that form were used.

(29) Truck--A motor vehicle having a gross vehicle weight rating of less than 10,000 pounds and designed primarily for the transport of persons and cargo.

(30) Vehicle--A motor vehicle subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(31) Vehicle owner--For the purposes of repair assistance or retrofit, the person who holds the Certificate of Title for the vehicle and/or the operator who is granted possession and is authorized to make repairs under a lease or purchase agreement; and for the purposes of accelerated retirement, the person who holds the Certificate of Title for the vehicle.

(32) Vehicle retirement facility--A facility that, at a minimum, is licensed, certified, or otherwise authorized by the Texas Department of Motor Vehicles to destroy, recycle, or dismantle vehicles.

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

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

TRD-202402578
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-6087

♦ ♦ ♦

SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §§114.50, 114.51, 114.53

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.50, 114.51, and 114.53 are proposed under the authority of Texas Water Code (TWC) §5.103, concerning Rules; TWC §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC §7.0002, 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 (TCAA).

The amendments to 30 TAC Chapter 114 are also proposed 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 §382.051, concerning Permitting Authority of the Commission 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 TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) must be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection, with the exception of rental vehicles as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions) which are subject to an annual emissions inspection at 3 - 24 years old [~~beginning with the first safety inspection~~]. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Motor Vehicles are excluded from the program. Inspection [~~Safety inspection~~] facilities and inspectors certified by the Texas Department of Public Safety (DPS) must inspect all subject vehicles in the following program areas as defined in §114.2 of this title [~~(relating to Inspection and Maintenance Definitions),~~] in accordance with the following schedule.

(1) All 1996 and newer model year vehicles registered and primarily operated in the Dallas-Fort Worth (DFW) program area, the Houston-Galveston-Brazoria (HGB) program area, or El Paso County equipped with on-board diagnostic (OBD) systems must be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures. [~~This paragraph applies to all vehicles registered and primarily operated in El Paso County, the Dallas-Fort Worth (DFW) program area, and the Houston-Galveston-Brazoria (HGB) program area.~~]

[~~(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems must be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.~~]

[~~(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties must be tested using an acceleration simulation mode (ASM-2) test or a vehicle emissions test approved by the EPA.~~]

[~~(C) All vehicle emissions inspection stations in affected program areas must offer both the ASM-2 test and the OBD test except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall petition the DPS in accordance with the rules and procedures established by the DPS.~~]

[~~(2) This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.~~]

[(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems must be tested using EPA-approved OBD test procedures.]

[(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties must be tested using an ASM-2 test or a vehicle emissions test approved by the EPA.]

[(C) All vehicle emissions inspection stations in affected program areas must offer both the ASM-2 test and the OBD test except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall petition the DPS in accordance with the rules and procedures established by the DPS.]

[(3) This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) program area.]

[(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems must be tested using EPA-approved OBD test procedures.]

[(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County must be tested using an ASM-2 test or a vehicle emissions test approved by the EPA.]

[(C) All vehicle emissions inspection stations in affected program areas must offer both the ASM-2 test and the OBD test except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator shall petition the DPS in accordance with the rules and procedures established by the DPS.]

[(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must be tested using EPA-approved OBD test procedures.]

[(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties must be tested using the ASM-2 test procedures or a vehicle emissions test approved by the EPA.]

[(4) This paragraph applies to all vehicles registered and primarily operated in the El Paso program area.]

[(A) All vehicles must be tested using a two-speed idle (TSI) test through December 31, 2006.]

[(B) Beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems must be tested using EPA-approved OBD test procedures.]

[(C) Beginning January 1, 2007, all pre-1996 model year vehicles must be tested using a TSI test.]

[(D) Beginning January 1, 2007, all vehicle emissions inspection stations in the El Paso program area must offer both the TSI test and OBD test.]

(2) [(5)] This paragraph applies to all vehicles registered and primarily operated in the Bexar County program area.

(A) Beginning November 1, 2026, all 2 - 24 year old subject vehicles equipped with OBD systems must be tested using EPA-approved OBD test procedures.

(B) Beginning November 1, 2026, all vehicle emissions inspection stations in the Bexar County program area must offer the OBD test.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, [EDFW,] HGB, El Paso, and Bexar County program areas that does not comply with:

[(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the DPS as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;]

(A) [(B)] All [beginning on the single sticker transition date, all] applicable air pollution emissions control-related requirements included in the annual vehicle [safety] inspection requirements administered by the DPS, as evidenced by a current valid vehicle registration insignia sticker, a current valid vehicle inspection report (VIR) [VIR], or other form of proof authorized by the DPS or the DMV; and

(B) [(C)] the vehicle emissions I/M requirements contained in this subchapter.

[(2) All federal government agencies must require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code, Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 et seq.). This requirement will not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.]

(2) [(3)] Any motorist in the DFW, [EDFW,] HGB, El Paso, or Bexar County program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealer [dealership] or leasing agency indicating that emissions repairs have been completed.

(3) [(4)] A motorist whose vehicle has failed an emissions test may request a challenge retest through the DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(4) [(5)] A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest shall have emissions-related repairs performed and submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist shall submit a VRF or applicable documentation as deemed necessary by the DPS.

(5) [(6)] A motorist whose vehicle is registered in the DFW, [EDFW,] HGB, El Paso, or Bexar County program areas or in any county adjacent to a program area and whose vehicle has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection and Maintenance Program).

(6) [~~(7)~~] A subject vehicle registered in a county without an I/M program that meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the VIR [~~vehicle inspection report (VIR)~~] or another proof of the program compliance as authorized by the DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(7) [~~(8)~~] State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must comply with all vehicle emissions I/M requirements for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC Chapter 23, Subchapter E, which defers the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by the DPS unless [~~all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and~~] the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission must consult with the DPS.

(2) No [~~Before the single sticker transition date as defined in §114.1 of this title, no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document). Beginning on the single sticker transition date, no~~] person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document).

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS unless such certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition.

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in the most recent version of the "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program." Copies of this document are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753 or at https://www.tceq.texas.gov/downloads/air-quality/mobile-source/txvehanlspecs.pdf. [~~*http://www.tceq.state.tx.us/assets/public/implementation/air/ms/IM/txvehanlspecs.pdf.*~~] The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment must be tested by an independent test laboratory. The cost of the certification must be absorbed by the manufacturer. The conformance demonstration must include, but is not limited to:

(1) certification that equipment design and construction conform with the specifications referenced in subsection (a) of this section;

(2) documentation of successful results from appropriate performance testing;

(3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;

(4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of an approved vehicle exhaust gas analyzer must be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Information Management System (TIMS) contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his appointee may issue a notice of approval to the analyzer manufacturer that endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the executive director or his appointee in the notice of approval.

(e) Any manufacturer or distributor that receives a notice of approval from the executive director or the executive director's appointee for vehicle emissions test equipment for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the Texas Clean Air Act or the rules and regulations promulgated thereunder if:

(1) any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented

resulting in the purchase or operation of equipment in the Texas I/M program that does not meet the specifications referenced in subsection (a) of this section;

(2) the applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the executive director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section;

(3) the manufacturer or distributor fails to provide on-site service response by a qualified repair technician within two business days of a request from an inspection station, excluding Sundays, national holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day), and other days when a purchaser's business might be closed;

(4) the manufacturer or distributor fails to fulfill, on a continuing basis, the requirements described in this section or in the specifications referenced in subsection (a) of this section; or

(5) the manufacturer fails to provide analyzer software updates within six months of request and fails to install analyzer updates within 90 days of commission written notice of acceptance.

§114.53. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station. This fee must include one free retest should the vehicle fail the emissions inspection provided that the motorist has the retest performed at the same station where the vehicle originally failed and submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed and the retest is conducted within 15 days of the initial emissions test.

(1) In the Dallas-Fort Worth program area, the Houston-Galveston-Brazoria program area, and El Paso County, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee not to exceed $18.50.

~~[(1) In El Paso County beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title (relating to Vehicle Emissions Inspection Requirements) must collect a fee of $14 and remit $2.50 to the Texas Department of Public Safety (DPS). If the El Paso County Commissioners Court adopts a resolution that is approved by the commission to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), the emissions inspection station in El Paso County must collect a fee of $16 and remit to the DPS $4.50 beginning upon the date specified by the commission and ending on the day before the single sticker transition date. Beginning on the single sticker transition date, any emissions inspection station in El Paso County required to conduct an emissions test in accordance with §114.50(a)(4)(A), (B), or (C) of this title must collect a fee not to exceed $11.50.]~~

~~[(2) In the Dallas-Fort Worth program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) of this title and in the extended Dallas-Fort Worth program area beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(2)(A) or (B) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, the emissions inspection station must remit to the DPS $2.50 for each acceleration simulation mode (ASM-2) test and $8.50 for each on-board diagnostics (OBD) test. Beginning on the single sticker transition date in the Dallas-Fort Worth and the extended Dallas-Fort Worth program areas, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(1)(A) or (B) and (2)(A) or (B) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.]~~

~~[(3) In the Houston-Galveston-Brazoria program area beginning May 1, 2002 and ending on the day before the single sticker transition date as defined in §114.1 of this title, any emissions inspection station in Harris County required to conduct an emissions test in accordance with §114.50(a)(3)(A) or (B) of this title and beginning May 1, 2003 and ending on the day before the single sticker transition date, any emissions inspection station in Brazoria, Fort Bend, Galveston, and Montgomery Counties required to conduct an emissions test in accordance with §114.50(a)(3)(D) or (E) of this title must collect a fee not to exceed $27. Beginning May 1, 2002 and ending on the day before the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, the emissions inspection station must remit to the DPS $2.50 for each ASM-2 test and $8.50 for each OBD test. Beginning on the single sticker transition date in Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties, any emissions inspection station required to conduct an emissions test in accordance with §114.50(a)(3)(A), (B), (D), or (E) of this title must collect a fee not to exceed $24.50 for each ASM-2 test and $18.50 for each OBD test.]~~

(2) ~~[(4)]~~ In the Bexar County program area beginning November 1, 2026, any emissions inspection station in Bexar County required to conduct an emissions test in accordance with §114.50(a)(5)(A) or (B) of this title must collect a fee not to exceed $18.50.

(b) The per-vehicle fee and the amount the inspection station remits to the Texas Department of Public Safety (DPS) [~~DPS~~] for a challenge test at an inspection station designated by the DPS, must be the same as the amounts set forth in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections for the state's remote sensing element must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section resulting from written notification that subject vehicle failed on-road testing. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) Vehicle [~~Beginning on the single sticker transition date as defined in §114.1 of this title, vehicle~~] owners shall remit as part of the annual vehicle registration fee collected by the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector the amount of the vehicle emissions inspection fee that is required to be remitted to the state.

(1) In El Paso County, the following requirements apply.

(A) If participating in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) [~~LIRAP~~], vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low

Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(B) If participating in the LIRAP and in the process of opting out, vehicle owners shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) If not participating in the LIRAP, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(2) In the Dallas-Fort Worth program area [~~and the extended Dallas-Fort Worth program areas~~], the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit [~~$2.50 for motor vehicles subject to ASM-2 tests and~~] $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit [~~$2.50 for motor vehicles subject to ASM-2 tests and~~] $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) In the Houston-Galveston-Brazoria program area, the following requirements apply.

(A) Vehicle owners in counties participating in the LIRAP shall remit [~~$2.50 for motor vehicles subject to ASM-2 tests and~~] $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title.

(B) Vehicle owners in counties participating in the LIRAP that are in the process of opting out shall remit [~~$2.50 for motor vehicles subject to ASM-2 tests and~~] $8.50 for motor vehicles subject to OBD tests to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $8.50 remitted for OBD tests, $6.00 constitutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(C) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(4) In the Bexar County program area, vehicle owners shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

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

TRD-202402579
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-6087

♦ ♦ ♦

DIVISION 2. LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

30 TAC §§114.60, 114.64, 114.66, 114.72

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.60, 114.64, 114.66, and 114.72 are proposed under the authority of Texas Water Code (TWC) §5.103, concerning Rules; TWC §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC §7.0002, 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 (TCAA).

The amendments to 30 TAC Chapter 114 are also proposed 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 §382.051, concerning Permitting Authority of the Commission 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 TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC §382.202, concerning Vehicle Emissions Inspection and Mainte-

nance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

§114.60. Applicability for LIRAP.

(a) The provisions of §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and Division 2 of this subchapter (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program) provide the minimum requirements for county implementation of a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and apply to counties that implement a vehicle emissions inspection program and have elected to implement LIRAP provisions.

(b) To be eligible for assistance under this division, vehicles must be subject to §114.50(a) of this title (relating to Vehicle Emissions Inspection Requirements).

(c) LIRAP does not apply to a vehicle that is a:

(1) fleet vehicle;

(2) commercial vehicle;

(3) vehicle owned or leased by a governmental entity;

(4) vehicle registered as a classic motor vehicle, custom vehicle, or street rod [~~as defined by~~] under Texas Transportation Code, §504.501 [~~§502.274~~];

(5) vehicle registered as an exhibition vehicle, including antique or military vehicles, under [~~as defined by~~] Texas Transportation Code, §504.502 [~~§502.275~~];

(6) vehicle not regularly used for transportation during the normal course of daily activities; or

(7) vehicle subject to §114.50(a) of this title that is registered in a non-participating county.

(d) A participating county must ensure that owners of vehicles under subsection (c) of this section do not receive monetary or compensatory assistance under LIRAP.

§114.64. LIRAP Requirements.

(a) Implementation. Participation in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) is voluntary. An affected county may choose to participate in the program at its discretion. Upon receiving a written request to participate in the LIRAP by a county commissioner's court, the executive director shall authorize the implementation of a LIRAP in the requesting county. The executive director and county shall enter into a grant contract for the implementation of the LIRAP.

(1) The grant contract must provide conditions, requirements, and projected funding allowances for the implementation of the LIRAP.

(2) A participating county may contract with an entity approved by the executive director for services necessary to implement the LIRAP. A participating county or its designated entity shall demonstrate to the executive director that, at a minimum, the county or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.

(3) The participating county shall remain the contracted entity even if the county contracts with another county or another entity approved by the executive director to administer the LIRAP.

(b) Repair and retrofit assistance. A LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

(1) the vehicle has failed a required emissions test within 30 days of application submittal;

(2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;

(3) the vehicle is currently registered in and has been registered in the participating program county for at least 12 of the 15 months immediately preceding the application for assistance;

[~~(4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report, or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;~~]

(4) [~~(5)~~] the vehicle owner's net family income is at or below 300% of the federal poverty level; and

(5) [~~(6)~~] any other requirements of the participating county or the executive director are met.

(c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.

(1) To determine eligibility, the participating county or its designated entity shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that [:]

[~~(A)~~] the vehicle meets the requirements under subsection (b)(1) - [~~(3) and~~] (5) of this section.[;]

[~~(B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and~~]

[~~(C) any other requirements of the participating county or the executive director are met~~].

[~~(2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.~~]

(2) [~~(3)~~] Notwithstanding the vehicle requirement provided under subsection (b)(1) of this section, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2010 minus 10 years equals 2000) and meets the requirements under subsection (b)(2), (3), and (4) [~~(5)~~] of this section, may be eligible for accelerated vehicle retirement and compensation.

(3) [~~(4)~~] Replacement vehicles must:

(A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations (CFR) §86.1811-04 or federal Tier 3, Bin 160 or cleaner Bin certification under 40 CFR §86.1811-17;

(B) have a gross vehicle weight rating of less than 10,000 pounds;

(C) have an odometer reading of not more than 70,000 miles;

(D) be a vehicle, the total cost of which does not exceed $35,000 or up to $45,000 for hybrid, electric, or natural gas vehicles, or vehicles certified as Tier 2, Bin 3 or cleaner Bin certification under 40 CFR §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17; and

(E) have passed an [~~a DPS motor vehicle safety inspection or safety and~~] emissions inspection within the 15-month period before the application is submitted.

(d) Compensation. The participating county shall determine eligibility and approve or deny the application promptly. If the requirements of subsection (b) or (c) of this section are met and based on available funding, the county shall authorize monetary or other compensations to the eligible vehicle owner.

(1) Compensations must be:

(A) no more than $600 and no less than $30 per vehicle annually to be used for emission-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or

(B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:

(i) $3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;

(ii) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph; and

(iii) $3,500 for a replacement hybrid, electric, natural gas, and federal Tier 2, Bin 3 or cleaner Bin certification under 40 CFR §86.1811-04 or federal Tier 3, Bin 85 or cleaner Bin certification under 40 CFR §86.1811-17 vehicle of the current model year or the three previous model years.

(2) Vehicle owners shall be responsible for paying the first $30 of emission-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.

(3) For accelerated vehicle retirement, provided that the compensation levels in paragraph (1)(B) of this subsection are met and minimum eligibility requirements under subsection (c) of this section are met, a participating county may set a specific level of compensation or implement a level of compensation schedule that allows flexibility. The following criteria may be used for determining the amount of financial assistance:

(A) model year of the vehicle;

(B) miles registered on the vehicle's odometer;

(C) fair market value of the vehicle;

(D) estimated cost of emission-related repairs necessary to bring the vehicle into compliance with emission standards;

(E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and

(F) vehicle owner's income.

(e) Reimbursement for repairs and retrofits. A participating county shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the county or designated entity. Repaired or retrofitted vehicles must pass an [~~a DPS safety and~~] emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the participating county has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.

(f) Reimbursements for replacements. A participating county shall ensure that funds are transferred to a participating dealer [~~automobile dealership~~] no later than 10 business days after the county receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the county or designated entity. A list of all administrative documents must be included in the agreements that are entered into by the county or designated entity and the participating dealers [~~automobile dealerships~~].

(1) A participating county shall provide an electronic means for distributing replacement funds to a participating dealer [~~automobile dealership~~] once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating [~~automobile~~] dealers shall be located in the State of Texas. Participation in the LIRAP by a [~~an automobile~~] dealer is voluntary.

(2) Participating counties shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the participating county has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this section.

(g) Opting out of the LIRAP. Participation in the LIRAP is voluntary. A participating county may opt out of the program. Procedures to release a participating county from the LIRAP shall be initiated upon the receipt of a written request to the executive director by the county commissioner's court in a participating county.

(1) A written request to opt out of the LIRAP shall request release from the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and the grant contract established in subsection (a) of this section. The written request shall include one of the following possible LIRAP opt-out effective dates as defined in §114.7 of this title:

(A) the LIRAP fee termination effective date as defined in §114.7 of this title; or

(B) the last day of the legislative biennium in which the LIRAP fee termination effective date as defined in §114.7 of this title occurred.

(2) Upon receipt of a written request to be released from participation in the LIRAP, the executive director shall notify, in writing, with a copy sent to the requesting county, the Texas Department of Motor Vehicles, DPS, and the Legislative Budget Board of Texas that the LIRAP fee should no longer be collected for vehicles undergoing inspection and registration in the affected county.

(3) A county opting out of the LIRAP remains a participating county until the LIRAP opt-out effective date as defined in §114.7 of this title, on which date the county is no longer subject to the LIRAP fee, and the grant contract established in subsection (a) of this section is ended. Not more than 90 days after a county's LIRAP opt-out effective date, the unspent balance of allocated LIRAP funds for that county will be returned to the commission unless the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds. If the county opting out has entered into an official inter-county elective agreement with other participating counties in the same region to share allocated LIRAP funds, then the portion of LIRAP allocations that is shared and unspent as of the LIRAP opt-out effective date will be redistributed among the remaining participating counties that are part of that agreement. This redistribution of funds will occur not more than 90 days after a county's LIRAP opt-out effective date.

§114.66. Disposition of Retired Vehicle.

(a) Vehicles retired under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) may not be resold or reused in their entirety in this or another state. Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in the state of Texas.

(b) The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the LIRAP;

(4) placed in a storage facility and subsequently destroyed, recycled, or dismantled within 12 months of the vehicle retirement date and its parts sold or used in the LIRAP; or

(5) repaired, brought into compliance, and used as a replacement vehicle under this division. Not more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.

(c) Notwithstanding subsection (b) of this section, the dismantler of a vehicle shall destroy the emissions control equipment and engine, certify those parts have been destroyed and not resold into the market place. The dismantler shall remove any mercury switches and shall comply with state and federal laws applicable to the management of those mercury switches.

(d) The dismantler shall provide certification that the vehicle has been destroyed to the [~~automobile~~] dealer from whom the dismantler has taken receipt of a vehicle for retirement. The [~~automobile~~] dealer shall submit to the participating county or its designated entity the proof of destruction from the dismantler.

(e) The dismantler shall provide the residual scrap metal of a retired vehicle under this section to a recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

§114.72. Local Advisory Panels.

(a) The commissioners court of a participating county may appoint one or more local advisory panels to provide advice on Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and to assist in identifying vehicles with intrinsic value that make these vehicles existing or future collectibles. A vehicle identified under this section may be sold to an individual if the vehicle is:

(1) repaired and brought into compliance;

(2) removed from the state;

(3) removed from an affected county; or

(4) stored for future restoration and cannot be registered in an affected county except under Transportation Code, §504.501 [~~§502.274~~] or §504.502 [~~§502.275~~].

(b) A commissioners court may delegate all or part of the financial and administrative matters to any of the local advisory panels that it appoints.

(c) A local advisory panel may consist of representatives from:

(1) dealers [~~automobile dealerships~~];

(2) automotive repair industry;

(3) emissions [~~safety~~] inspection facilities;

(4) the general public;

(5) antique and vintage car clubs;

(6) local nonprofit organizations; and

(7) locally affected governments.

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

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

TRD-202402580
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-6087

♦ ♦ ♦

DIVISION 3. EARLY ACTION COMPACT COUNTIES

30 TAC §§114.80 - 114.82, 114.84, 114.87

Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.80, 114.81, 114.82, 114.84, and 114.87 are proposed

under the authority of Texas Water Code (TWC) §5.103, concerning Rules; TWC §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC §7.0002, 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 (TCAA).

The amendments to 30 TAC Chapter 114 are also proposed 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 §382.051, concerning Permitting Authority of the Commission 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 TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

§114.80. Applicability.

(a) The requirements of this section apply only to counties that have adopted an early action compact (EAC) clean air action plan, and that along with the largest municipality in each county have submitted to the commission a resolution requesting implementation of a vehicle inspection and maintenance (I/M) program in that county.

(b) Travis and Williamson Counties are the only counties in the Austin/Round Rock metropolitan statistical area affected by subsections (a) and (c) of this section.

(c) The EAC I/M program requires all gasoline-powered motor vehicles 2 - 24 years old that are registered and primarily operated in Travis and Williamson Counties to undergo an annual emissions inspection [~~, beginning with the first safety inspection~~]. The program requires all gasoline-powered rental vehicles, as defined in §114.2 of this title (relating to Inspection and Maintenance (I/M) Definitions), 3 - 24 years old that are registered and primarily operated in Travis and Williamson Counties to undergo an annual emissions inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. Inspection [~~Safety inspection~~] facilities and inspectors certified by the Texas Department of Public Safety shall inspect all subject vehicles.

§114.81. Vehicle Emissions Inspection Requirements.

This section applies to all vehicles registered and primarily operated, as defined in §114.2 of this title (relating to Inspection and Maintenance (I/M) Definitions), in the affected early action compact (EAC) program counties, except as provided in §114.80 of this title (relating to Applicability).

(1) All [~~Beginning September 1, 2005, all 1996 and newer model year~~] vehicles registered and primarily operated in affected EAC counties equipped with on-board diagnostic (OBD) systems must be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

[~~(2) Beginning September 1, 2005, all pre-1996 model year vehicles registered and primarily operated in affected EAC counties must be tested using a two-speed idle (TSI) test, or a vehicle emissions test that meets state implementation plan emissions reduction requirements and is approved by the EPA.~~]

(2) [~~(3)~~] All vehicle emissions inspection stations in affected EAC program counties shall offer [~~both~~] the OBD test [~~and the TSI test~~].

§114.82. Control Requirements.

(a) No person or entity may operate, or allow the operation of, a motor vehicle registered in the affected early action compact (EAC) counties that does not comply with:

[~~(1) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) as evidenced prior to the single sticker transition date as defined in §114.1 of this title (relating to Definitions) by a current valid inspection certificate affixed to the vehicle windshield, a current valid vehicle inspection report (VIR), or other form of proof authorized by the DPS;~~]

(1) [~~(2)~~] All [~~beginning on the single sticker transition date, all~~] applicable air pollution emissions control-related requirements included in the annual vehicle [~~safety~~] inspection requirements administered by the Texas Department of Public Safety (DPS) [~~DPS~~] as evidenced by a current valid vehicle registration insignia sticker or a current valid vehicle inspection report (VIR) [~~VIR~~], or other form of proof authorized by the DPS or the Texas Department of Motor Vehicles [~~DMV~~] and

(2) [~~(3)~~] the vehicle emissions inspection and maintenance (I/M) requirements contained in this subchapter.

[~~(b) All federal government agencies must require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in an affected EAC county to comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 et seq.). This requirement does not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.~~]

(b) [~~(c)~~] A motorist in an affected EAC county who has received a notice from an emissions inspection station that there are unresolved recall items on the motor vehicle shall furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection, such as a written statement from the dealer [~~dealership~~] or leasing agency indicating that emissions repairs have been completed.

(c) [~~(d)~~] A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the cost of the retest is free.

(d) [~~(e)~~] A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or has failed a challenge retest shall have emissions-related repairs performed and submit a properly completed vehicle repair form in order to receive a retest. In order to receive a waiver or time extension, the motorist shall submit a vehicle repair form or applicable documentation as considered necessary by the DPS.

(e) [~~(f)~~] A motorist whose vehicle is registered in an affected EAC county, or in any county adjacent to an affected EAC county, and has failed an on-road test administered by the DPS shall:

(1) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(2) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(f) [~~(g)~~] A vehicle registered in a county without an I/M program that meets the applicability criteria of §114.80(c) of this title (relating to Applicability), and the ownership of which has changed through a retail sale as defined by [~~Texas Motor Vehicle Commission Code, Article 4413(36), §1.03 (moved to~~] Texas Occupations Code, §2301.002 [~~, effective June 1, 2003)~~], is not eligible for title receipt or registration in an affected EAC program county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report or another proof of the program compliance as authorized by the DPS. All [~~1996 and newer model year~~] vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this subsection.

(g) [~~(h)~~] State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process must comply with all vehicle emissions I/M requirements contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision for vehicles primarily operated in I/M program areas.

§114.84. Prohibitions.

(a) No person may issue or allow the issuance of a vehicle inspection report, as authorized by the Texas Department of Public Safety (DPS), unless all applicable air pollution emissions control-related requirements of [~~the annual vehicle safety inspection and~~] the vehicle emissions inspection and maintenance (I/M) requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision are completely and properly performed in accordance with the rules and regulations adopted by the DPS and the commission. Prior to taking any enforcement action regarding this provision, the executive director shall consult with the DPS.

(b) No [~~Before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), no person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision. Beginning on the single sticker transition date, no~~] person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen vehicle registration insignia stickers, vehicle inspection reports, vehicle repair forms, vehicle emissions repair documentation, or other documents that may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the Austin Area Early Action Compact Ozone State Implementation Plan Revision.

(c) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS unless the certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(d) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by the DPS, without first obtaining and maintaining DPS recognition. Requirements to become a DPS Recognized Emission Repair Technician are contained in 37 TAC Chapter 23, Subchapter E (relating to Vehicle Emissions Inspection and Maintenance Program).

§114.87. Inspection and Maintenance Fees.

(a) The following fees must be paid for an emissions inspection of a vehicle at an inspection station in an affected early action compact program county. This fee must include one free retest if the vehicle fails the emissions inspection, provided that the motorist has the retest performed at the same station where the vehicle originally failed; the motorist submits, prior to the retest, a properly completed vehicle repair form showing that emissions-related repairs were performed; and the retest is conducted within 15 days of the initial emissions test. [~~In Travis and Williamson Counties beginning September 1, 2005 and ending on the day before the single sticker transition date as defined in §114.1 of this title (relating to Definitions), any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title (relating to Applicability) must collect a fee not to exceed $16 and remit $4.50 to the Texas Department of Public Safety (DPS) for each on-board diagnostic and two-speed idle test.~~] In Travis and Williamson Counties [~~beginning on the single sticker transition date~~], any emissions inspection station required to conduct an emissions test in accordance with §114.80 of this title must collect a fee not to exceed $18.50 [~~$11.50~~] for each on-board diagnostic [~~and two-speed idle~~] test.

(b) The per-vehicle fee and the amount the inspection station remits to the DPS for a challenge test at an inspection station designated by the DPS must be the same as the amounts specified in subsection (a) of this section. The challenge fee must not be charged if the vehicle is retested within 15 days of the initial test.

(c) Inspection stations performing out-of-cycle vehicle emissions inspections resulting from written notification that the subject vehicle failed on-road testing (remote sensing) must charge a motorist for an out-of-cycle emissions inspection in the amount specified in subsection (a) of this section. If the vehicle passes the vehicle emissions inspection, the vehicle owner may request reimbursement from the DPS.

(d) In [~~Beginning on the single sticker transition date as defined in §114.1 of this title in~~] Travis and Williamson Counties, the following requirements apply.

(1) Vehicle owners in counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) shall remit $4.50 for motor vehicles subject to vehicle emissions inspections to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee. Of the $4.50 remitted, $2.00 constitutes the LIRAP fee as defined in §114.7 of this title (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions).

(2) Vehicle owners in counties participating in the LIRAP and in the process of opting out shall remit $4.50 for motor vehicles subject to emissions inspection to the DMV or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee until the LIRAP fee termination effective date as defined in §114.7 of this title. Of the $4.50 remitted, $2.00 consti-

tutes the LIRAP fee as defined in §114.7 of this title. Upon the LIRAP fee termination effective date, vehicle owners in participating counties that are in the process of opting out of the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspections to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

(3) Vehicle owners in counties not participating in the LIRAP shall remit $2.50 for motor vehicles subject to vehicle emissions inspection to the DMV or county tax-assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee.

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

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

TRD-202402581
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-6087

♦ ♦ ♦

CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§336.2, 336.102, 336.105, 336.208, 336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357, 336.625, 336.701, and 336.1215.

Background and Summary of the Factual Basis for the Proposed Rule

The commission proposes changes to Chapter 336, Subchapter D to correct a reference to Department of Transportation rules, remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources, and correct an error in an equation for the "sum of fractions" methodology to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

The commission proposes changes to Subchapters A, D, G, and H to change the spelling of "byproduct" to "by-product" to be consistent with Texas Health and Safety Code (THSC), Chapter 401. The commission proposes changes to Subchapter H to correct the reference to a rule to correct errors. The commission proposes changes to Subchapter B to add a definition of "closure" specific to Subchapter B and add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission proposes changes to Subchapter B to remove instructions about the annual fee for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one-year period prior to June 17, 2007, to remove obsolete text. The commission proposes changes to Subchapter C and M to modify the training requirements for the Radiation Safety Officer (RSO) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

Section by Section Discussion

The commission proposes administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

§336.2, *Definitions*

The commission proposes to amend §§336.2(20), 336.2(20)(B), 336.2(89)(B)(iv), 336.2(99), 336.2(126), and 336.2(170) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.102, *Definitions*

The commission proposes to add a definition of closure specific to Subchapter B for clarity since licensing fees are different when a license is in closure. The proposed definition mirrors the definition of closure found in 30 Texas Administrative Code (TAC) §37.9035. The commission proposes to increase the numbering of the subsequent definitions by one.

§336.105, *Schedule of Fees for Other Licenses*

The commission proposes to remove 30 TAC §336.105(g) to remove obsolete text regarding instructions for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services prior to June 17, 2007, and amend §336.105(i) and §336.105(j) to add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission proposes to adjust the numbering of the remaining rules accordingly.

§336.208, *Radiation Safety Officer*

The commission proposes to amend §336.208(a)(3) to modify the training requirements for the RSO from requiring at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to requiring additional training as determined by the Executive Director. This modification provides the commission flexibility in determining adequate training for the RSO at different licensed facilities.

§336.329, *Exemptions to Labeling Requirements*

The commission proposes to amend the reference to Department of Transportation rules in 30 TAC §336.329(4). This rule amendment is proposed to ensure compatibility with federal regulations promulgated by the NRC.

§336.331, *Transfer of Radioactive Material*

The commission proposes to amend §§336.331(a), 336.331(b), 336.331(c), 336.331(d)(5), 336.331(f), and 336.331(i) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.332, *Preparation of Radioactive Material for Transport*

The commission proposes to amend §336.332(a) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.336, *Tests*

The commission proposes to amend §336.336(a)(1) and §336.336(a)(4) to change the spelling of "byproduct" to "by-product" to be consistent with Texas Health and Safety Code, Chapter 401.

§336.341, *General Recordkeeping Requirements for Licensees*

The commission proposes to amend §336.341(e) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.351, *Reports of Transactions Involving Nationally Tracked Sources*.

The commission proposes to remove 30 TAC §336.351(a)(8) to remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources. This rule amendment is proposed to ensure compatibility with federal regulations promulgated by the NRC.

§336.357, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*

The commission proposes to amend the figure in 30 TAC §336.357(z) by correcting an error in the equation for the "sum of fractions" methodology. This rule amendment is proposed to ensure compatibility with federal regulations promulgated by the NRC.

§336.625, *Expiration and Termination of Licenses*

The commission proposes to amend §§336.625(c), 336.625(c)(1), and 336.625(i)(1) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.701, *Scope and General Provisions*

The commission proposes to amend §336.701(b)(2) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401 and change the reference to §336.2(13)(B) to §336.2(20)(B) to correct an error.

§336.1215, *Issuance of Licenses*

The commission proposes to amend §336.1215(a)(5) by referring to 30 TAC §336.208 for the training requirements for a RSO and removing the additional requirements in §336.1215(a)(5)(A) and (B) since these requirements are also stated in 30 TAC §336.208. The commission proposes to remove §336.1215(a)(5)(C) to remove the training requirements that the RSO have at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

Fiscal Note: Costs to State and Local Government

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

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistent with other state and federal rules and regulations, improved clarity, and the removal of redundant and outdated requirements.

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

Local Employment Impact Statement

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

Rural Community Impact Statement

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

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code (TGC), §2001.0225. The commission determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rule is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the proposed amendments is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. Additionally, some of these pro-

posed amendments are required for TCEQ to maintain compatibility with the NRC for these licensing programs. Therefore, the proposed rulemaking is not a major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the proposed rules do not meet any of the four applicability requirements listed in TGC, §2001.0225. Section 2001.0225 applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking, in part, to ensure compatibility with federal regulations promulgated by the NRC. The State of Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1952, as amended (Atomic Energy Act).

Second, the rulemaking does not propose requirements that are more stringent than existing state laws. THSC, Chapter 401, authorizes the commission to regulate the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The proposed rulemaking seeks to make corrections and provide clarity and flexibility consistent with state law.

Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The proposed rulemaking does not exceed the NRC requirements nor exceed the requirements for retaining status as an "Agreement State."

Fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, sections of THSC, Chapter 401, authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

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

Takings Impact Assessment

The commission evaluated the proposed rules and performed analysis of whether the proposed rules constitute a taking under TGC, Chapter 2007. The specific purpose of the proposed rules is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. The proposed rules would substantially advance this stated purpose by correcting references to rules, correcting misspellings, adding a definition of "closure," removing obsolete language, correcting errors to ensure compatibility with federal regulations, and modifying training requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules will not burden private real property because they remove obsolete text, correct errors, add clarity, and provide flexibility in training requirements at licensed facilities.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on July 29, 2024 at 10:00 a.m. in Building F, room 2210 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m..

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by July 25, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on July 26, 2024, to those who register for the hearing.

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

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTU0NzNjMzMtMGI5YS00NGFmLWI4ODktZmIyZDRmODQyMmIw%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-

06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

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

Submittal of Comments

Written comments may be submitted to Gwen Ricco, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-010-336-WS. The comment period closes at 11:59 p.m. on July 30, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Hans Weger, Radioactive Materials Section, 512-239-6465.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendment implements THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, or as described in Chapter 3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Additional definitions used only in a certain subchapter will be found in that subchapter.

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (G_y).

(2) Accelerator-produced radioactive material--Any material made radioactive by a particle accelerator.

(3) Access control--A system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(4) Activity--The rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(5) Adult--An individual 18 or more years of age.

(6) Aggregated--Accessible by the breach of a single physical barrier that allows access to radioactive material in any form, including any devices containing the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(7) Agreement state--Any state with which the United States Nuclear Regulatory Commission (NRC) or the Atomic Energy Commission has entered into an effective agreement under the Atomic Energy Act of 1954, §274b, as amended. Non-agreement State means any other State.

(8) Airborne radioactive material--Any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(9) Airborne radioactivity area--A room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations:

(A) in excess of the derived air concentrations (DACs) specified in Table I of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage); or

(B) to a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6% of the ALI or 12 DAC-hours.

(10) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(11) Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the "reference man" that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2 of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(12) Approved individual--An individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with §336.357(b) - (h) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) and who has completed the training required by §336.357(j)(3) of this title.

(13) As low as is reasonably achievable--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and licensed radioactive materials in the public interest.

(14) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(15) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators and self-contained breathing apparatus units.

(16) Background investigation--The investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(17) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally-occurring radioactive material, including radon (except as a decay product of source or special nuclear material) and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include radiation from radioactive materials regulated by the commission, Texas Department of State Health Services, United States Nuclear Regulatory Commission, or an Agreement State.

(18) Becquerel (Bq)--See §336.4 of this title (relating to Units of Radioactivity).

(19) Bioassay--The determination of kinds, quantities, or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of the rules in this chapter, "radiobioassay" is an equivalent term.

(20) By-product [~~Byproduct~~] material--

(A) a radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material;

(B) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics. Underground ore bodies depleted by these solution extraction processes do not constitute "by-product [~~byproduct~~] material" within this definition;

(C) any discrete source of radium-226 that is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity;

(D) any material that has been made radioactive by use of a particle accelerator, and is produced, extracted, or converted for use for a commercial, medical, or research activity; and

(E) any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial, medical, or research activity and that the United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

(21) CFR--Code of Federal Regulations.

(22) Carrier--A person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(23) Category 1 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(24) Category 2 quantity of radioactive material--A quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in accordance with §336.357(z) of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material). This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(25) Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten days, for Class W (Weeks) from 10 to 100 days, and for Class Y (Years) of greater than 100 days. For purposes of the rules in this chapter, "lung class" and "inhalation class" are equivalent terms.

(26) Collective dose--The sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(27) Committed dose equivalent (HT , 50) (CDE)--The dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

(28) Committed effective dose equivalent (HE ,50) (CEDE)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

(29) Compact--The Texas Low-Level Radioactive Waste Disposal Compact established under Texas Health and Safety Code, §403.006 and Texas Low-Level Radioactive Waste Disposal Compact Consent Act, Public Law Number 105-236 (1998).

(30) Compact waste--Low-level radioactive waste that:

(A) is generated in a host state or a party state; or

(B) is not generated in a host state or a party state, but has been approved for importation to this state by the compact commission under §3.05 of the compact established under Texas Health and Safety Code, §403.006.

(31) Compact waste disposal facility--The low-level radioactive waste land disposal facility licensed by the commission under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) for the disposal of compact waste.

(32) Constraint (dose constraint)--A value above which specified licensee actions are required.

(33) Critical group--The group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(34) Curie (Ci)--See §336.4 of this title (relating to Units of Radioactivity).

(35) Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(36) Decommission--To remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

(A) release of the property for unrestricted use and termination of license; or

(B) release of the property under restricted conditions and termination of the license.

(37) Deep-dose equivalent (Hd) (which applies to external whole-body exposure)--The dose equivalent at a tissue depth of one centimeter (1,000 milligrams/square centimeter).

(38) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(39) Depleted uranium--The source material uranium in which the isotope uranium-235 is less than 0.711%, by weight, of the total uranium present. Depleted uranium does not include special nuclear material.

(40) Derived air concentration (DAC)--The concentration of a given radionuclide in air which, if breathed by the "reference man" for a working year of 2,000 hours under conditions of light work (inhalation rate of 1.2 cubic meters of air/hour), results in an intake of one ALI. DAC values are given in Table I, Column 3, of §336.359(d) of this title (relating to Appendix B. Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage).

(41) Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee shall take 2,000 DAC-hours to represent one, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

(42) Discrete source--A radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(43) Disposal--With regard to low-level radioactive waste, the isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later.

(44) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only Self-Contained breathing apparatus.

(45) Distinguishable from background--The detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(46) Diversion--The unauthorized movement of radioactive material subject to §336.357 of this title (relating to Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material) to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(47) Dose--A generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of the rules in this chapter, "radiation dose" is an equivalent term.

(48) Dose equivalent (H_T)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (S_v).

(49) Dose limits--The permissible upper bounds of radiation doses established in accordance with the rules in this chapter. For purposes of the rules in this chapter, "limits" is an equivalent term.

(50) Dosimetry processor--An individual or organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(51) Effective dose equivalent (H_E)--The sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated.

(52) Embryo/fetus--The developing human organism from conception until the time of birth.

(53) Entrance or access point--Any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes portals of sufficient size to permit human access, irrespective of their intended use.

(54) Environmental Radiation and Perpetual Care Account--An account in the general revenue fund established for the purposes specified in the Texas Health and Safety Code, §401.306.

(55) Escorted access--Accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(56) Exposure--Being exposed to ionizing radiation or to radioactive material.

(57) Exposure rate--The exposure per unit of time.

(58) External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(59) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(60) Federal facility waste--Low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b - 2021j). Excluded from this definition is low-level radioactive waste that is classified as greater than Class C in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste).

(61) Federal facility waste disposal facility--A low-level radioactive waste land disposal facility for the disposal of federal facility waste licensed under Subchapters H and J of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste, and Federal Facility Waste Disposal Facility).

(62) Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(63) Fingerprint Orders--Orders issued by the Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

(64) Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(65) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(66) General license--An authorization granted by an agency under its rules which is effective without the filing of an application with that agency or the issuance of a licensing document to the particular person.

(67) Generally applicable environmental radiation standards--Standards issued by the EPA under the authority of the Atomic Energy Act of 1954, as amended through October 4, 1996, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(68) Gray (G_y)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(69) Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Definitions).

(70) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(71) High radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

(72) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(73) Host state--A party state in which a compact facility is located or is being developed. The state of Texas is the host state under the Texas Low-Level Radioactive Waste Disposal Compact, §2.01, established under Texas Health and Safety Code, §403.006.

(74) Individual--Any human being.

(75) Individual monitoring--The assessment of:

(A) dose equivalent by the use of individual monitoring devices;

(B) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, derived air concentration-hour; or

(C) dose equivalent by the use of survey data.

(76) Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent such as film badges, thermoluminescence dosimeters, pocket ionization chambers, and personal ("lapel") air sampling devices.

(77) Inhalation class--See "Class."

(78) Inspection--An official examination and/or observation including, but not limited to, records, tests, surveys, and monitoring to determine compliance with the Texas Radiation Control Act and rules, orders, and license conditions of the commission.

(79) Internal dose--That portion of the dose equivalent received from radioactive material taken into the body.

(80) Land disposal facility--The land, buildings and structures, and equipment which are intended to be used for the disposal of low-level radioactive wastes into the subsurface of the land. For purposes of this chapter, a "geologic repository" as defined in 10 Code of Federal Regulations §60.2 as amended through October 27, 1988 (53 FR 43421) (relating to Definitions - high-level radioactive wastes in geologic repositories) is not considered a "land disposal facility."

(81) Lens dose equivalent (LDE)--The external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

(82) License--See "Specific license."

(83) Licensed material--Radioactive material received, possessed, used, processed, transferred, or disposed of under a license issued by the commission.

(84) Licensee--Any person who holds a license issued by the commission in accordance with the Texas Health and Safety Code, Chapter 401 (Radioactive Materials and Other Sources of Radiation) and the rules in this chapter. For purposes of the rules in this chapter, "radioactive material licensee" is an equivalent term. Unless stated otherwise, "licensee" as used in the rules of this chapter means the holder of a "specific license."

(85) Licensing state--Any state with rules equivalent to the Suggested State Regulations for Control of Radiation relating to, and having an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and which has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(86) Local law enforcement agency (LLEA)--A public or private organization that has been approved by a federal, state, or local government to carry firearms; make arrests; and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(87) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(88) Lost or missing licensed radioactive material--Licensed material whose location is unknown. This definition includes material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(89) Low-level radioactive waste--

(A) Except as provided by subparagraph (B) of this paragraph, low-level radioactive waste means radioactive material that:

(i) is discarded or unwanted and is not exempt by a Texas Department of State Health Services rule adopted under the Texas Health and Safety Code, §401.106;

(ii) is waste, as that term is defined by 10 Code of Federal Regulations (CFR) §61.2; and

(iii) is subject to:

(I) concentration limits established under this chapter; and

(II) disposal criteria established under this chapter.

(B) Low-level radioactive waste does not include:

(i) high-level radioactive waste defined by 10 CFR §60.2;

(ii) spent nuclear fuel as defined by 10 CFR §72.3;

(iii) transuranic waste as defined in this section;

(iv) by-product [~~byproduct~~] material as defined by paragraph (20)(B) - (E) of this section;

(v) naturally occurring radioactive material (NORM) waste; or

(vi) oil and gas NORM waste.

(C) When used in this section, the references to 10 CFR sections mean those CFR sections as they existed on September 1, 1999, as required by Texas Health and Safety Code, §401.005.

(90) Lung class--See "Class."

(91) Member of the public--Any individual except when that individual is receiving an occupational dose.

(92) Minor--An individual less than 18 years of age.

(93) Mixed waste--A combination of hazardous waste, as defined in §335.1 of this title (relating to Definitions) and low-level radioactive waste. The term includes compact waste and federal facility waste containing hazardous waste.

(94) Mobile device--A piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(95) Monitoring--The measurement of radiation levels, radioactive material concentrations, surface area activities, or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of the rules in this chapter, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(96) Movement control center--An operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(97) Nationally tracked source--A sealed source containing a quantity equal to or greater than category 1 or category levels of any radioactive material listed in §336.351 of this title (relating to Reports of Transactions Involving Nationally Tracked Sources). In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 2 threshold but less than the category 1 threshold.

(98) Naturally occurring or accelerator-produced radioactive material (NARM)--Any NARM except source material or special nuclear material.

(99) Naturally occurring radioactive material (NORM) waste--Solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product [~~byproduct~~] material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt under rules of the Texas Department of State Health Services adopted under Texas Health and Safety Code, §401.106.

(100) Near-surface disposal facility--A land disposal facility in which low-level radioactive waste is disposed of in or within the upper 30 meters of the earth's surface.

(101) Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(102) No-later-than arrival time--The date and time that the shipping licensee and receiving licensee have established as the time an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than arrival time may not be more than six hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(103) Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of the rules in this chapter, "deterministic effect" is an equivalent term.

(104) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation and/or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the public.

(105) Oil and gas naturally occurring radioactive material (NORM) waste--NORM waste that constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in the Texas Natural Resources Code, §91.1011.

(106) On-site--The same or geographically contiguous property that may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that the property owner controls and to which the public does not have access, is also considered on-site property.

(107) Particle accelerator--Any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and discharging the resultant particulate or other associated radiation at energies usually in excess of 1 million electron volts (MeV).

(108) Party state--Any state that has become a party to the compact in accordance with Article VII of the Texas Low-Level Radioactive Waste Disposal Compact, established under Texas Health and Safety Code, §403.006.

(109) Perpetual care account--The Environmental Radiation and Perpetual Care Account as defined in this section.

(110) Personnel monitoring equipment--See "Individual monitoring devices."

(111) Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(112) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(113) Powered air-purifying respirator (PAPR)--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(114) Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(115) Principal activities--Activities authorized by the license which are essential to achieving the purpose(s) for which the license is issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(116) Public dose--The dose received by a member of the public from exposure to radiation and/or radioactive material released by a licensee, or to any other source of radiation under the control of the licensee. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(117) Qualitative fit test (QLFT)--A pass/fail test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(118) Quality factor (Q)--The modifying factor listed in Table I or II of §336.3(c) or (d) of this title (relating to Units of Radiation Exposure and Dose) that is used to derive dose equivalent from absorbed dose.

(119) Quantitative fit test (QNFT)--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(120) Quarter (Calendar quarter)--A period of time equal to one-fourth of the year observed by the licensee (approximately 13 consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(121) Rad--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(122) Radiation--Alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of the rules in this chapter, "ionizing radiation" is an equivalent term. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radio- or microwaves or visible, infrared, or ultraviolet light.

(123) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(124) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(125) Radioactive material--A naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously.

(126) Radioactive substance--Includes by-product [~~byproduct~~] material, radioactive material, low-level radioactive waste, source material, special nuclear material, source of radiation, and naturally occurring radioactive material (NORM) NORM waste, excluding oil and gas NORM waste.

(127) Radioactivity--The disintegration of unstable atomic nuclei with the emission of radiation.

(128) Radiobioassay--See "Bioassay."

(129) Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics shall be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of "reference man" is contained in the International Commission on Radiological Protection (ICRP) report, ICRP Publication 23, "Report of the Task Group on Reference Man."

(130) Rem--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(131) Residual radioactivity--Radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 Code of Federal Regulations Part 20.

(132) Respiratory protection equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials. For purposes of the rules in this chapter, "respiratory protective device" is an equivalent term.

(133) Restricted area--An area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building shall be set apart as a restricted area.

(134) Reviewing official--The individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

(135) Roentgen (R)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(136) Sabotage--Deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

(137) Safe haven--A readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(138) Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(139) Sealed source--Radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions that are likely to be encountered in normal use and handling.

(140) Security zone--Any temporary or permanent area established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(141) Self-contained breathing apparatus (SCBA)--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(142) Shallow-dose equivalent (H_s) (which applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeter (seven milligrams/square centimeter).

(143) SI--The abbreviation for the International System of Units.

(144) Sievert (S_v)--See §336.3 of this title (relating to Units of Radiation Exposure and Dose).

(145) Site boundary--That line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(146) Source material--

(A) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(B) ores that contain, by weight, 0.05% or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(147) Special form radioactive material--Radioactive material which is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule and which has at least one dimension not less than five millimeters and which satisfies the test requirements of 10 Code of Federal Regulations §71.75 as amended through September 28, 1995 (60 FR 50264) (Transportation of License Material).

(148) Special nuclear material--

(A) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the National Regulatory Commission, under the provisions of the Atomic Energy Act of 1954, §51, as amended through November 2, 1994 (Public Law 103-437), determines to be special nuclear material, but does not include source material; or

(B) any material artificially enriched by any of the foregoing, but does not include source material.

(149) Special nuclear material in quantities not sufficient to form a critical mass--Uranium enriched in the isotope 235 in quantities not exceeding 350 grams of contained uranium-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or any combination of these in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified in this paragraph for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1. For example, the following quantities in combination would not exceed the limitation: (175 grams contained U-235/350 grams) + (50 grams U-233/200 grams) + (50 grams Pu/200 grams) = 1.

(150) Specific license--A licensing document issued by an agency upon an application filed under its rules. For purposes of the rules in this chapter, "radioactive material license" is an equivalent term. Unless stated otherwise, "license" as used in this chapter means a "specific license."

(151) State--The state of Texas.

(152) Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of the rules in this chapter, "probabilistic effect" is an equivalent term.

(153) Supplied-air respirator (SAR) or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(154) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, and/or presence of radioactive materials or other sources of radiation. When appropriate, this evaluation includes, but is not limited to, physical examination of the location of radioactive material and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(155) Telemetric position monitoring system--A data transfer system that captures information from instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(156) Termination--As applied to a license, a release by the commission of the obligations and authorizations of the licensee under the terms of the license. It does not relieve a person of duties and responsibilities imposed by law.

(157) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(158) Total effective dose equivalent (TEDE)--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(159) Total organ dose equivalent (TODE)--The sum of the deep-dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in §336.346(a)(6) of this title (relating to Records of Individual Monitoring Results).

(160) Transuranic waste--For the purposes of this chapter, wastes containing alpha emitting transuranic radionuclides with a half-life greater than five years at concentrations greater than 100 nanocuries/gram.

(161) Trustworthiness and reliability--Characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(162) Type A quantity (for packaging)--A quantity of radioactive material, the aggregate radioactivity of which does not exceed A 1 for special form radioactive material or A2 for normal form radioactive material, where A1 and A2 are given in or shall be determined by procedures in Appendix A to 10 Code of Federal Regulations Part 71 as amended through September 28, 1995 (60 FR 50264) (Packaging and Transportation of Radioactive Material).

(163) Type B quantity (for packaging)--A quantity of radioactive material greater than a Type A quantity.

(164) Unescorted access--Solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(165) Unrefined and unprocessed ore--Ore in its natural form before any processing, such as grinding, roasting, beneficiating, or refining.

(166) Unrestricted area--Any area that is not a restricted area.

(167) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(168) Very high radiation area--An area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (five grays) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(169) Violation--An infringement of any provision of the Texas Radiation Control Act (TRCA) or of any rule, order, or license condition of the commission issued under the TRCA or this chapter.

(170) Waste--Low-level radioactive wastes containing source, special nuclear, or by-product [~~byproduct~~] material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product [~~byproduct~~] material as defined in paragraph (20)(B) - (E) of this section.

(171) Week--Seven consecutive days starting on Sunday.

(172) Weighting factor (w_T) for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:
Figure: 30 TAC §336.2(172) (No change.)

(173) Whole body--For purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(174) Worker--An individual engaged in activities under a license issued by the commission and controlled by a licensee, but does not include the licensee.

(175) Working level (WL)--Any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are: for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(176) Working level month (WLM)--An exposure to one working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

(177) Year--The period of time beginning in January used to determine compliance with the provisions of the rules in this chapter. The licensee shall change the starting date of the year used to determine compliance by the licensee provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

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

TRD-202402625
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.102, §336.105

Statutory Authority

The rule changes are proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104,

which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.102. Definitions.

Terms used in this subchapter are defined in §336.2 of this title (relating to Definitions). Additional terms used in this subchapter have the following definitions:

(1) Closure--Any one or combination of the following: closure, dismantlement, decontamination, decommissioning, reclamation, disposal, aquifer restoration, stabilization, monitoring, or post closure observation and maintenance.

(2) [~~(1)~~] Emergency response--The application of those capabilities necessary for the protection of the public and the environment from the effects of an accidental or uncontrolled release of radioactive materials, including the equipping, training, and periodic retraining of response personnel.

(3) [~~(2)~~] Fixed nuclear facility--

(A) Any nuclear reactor(s) at a single site;

(B) Any facility designed or used for the assembly or disassembly of nuclear weapons; or

(C) Any other facility using special nuclear material for which emergency response activities, including training, are conducted to protect the public health and safety or the environment.

§336.105. Schedule of Fees for Other Licenses.

(a) Each application for a license under Subchapter F of this chapter (relating to Licensing of Alternative Methods of Disposal of Radioactive Material), Subchapter G of this chapter (relating to Decommissioning Standards), Subchapter K of this chapter (relating to Commercial Disposal of Naturally Occurring Radioactive Material Waste from Public Water Systems), Subchapter L of this chapter (relating to Licensing of Source Material Recovery and By-product Material Disposal Facilities), or Subchapter M of this chapter (relating to Licensing of Radioactive Substances Processing and Storage Facilities) must be accompanied by an application fee as follows:

(1) facilities regulated under Subchapter F of this chapter: $50,000;

(2) facilities regulated under Subchapter G of this chapter: $10,000;

(3) facilities regulated under Subchapter K of this chapter: $50,000;

(4) facilities regulated under Subchapter L of this chapter: $463,096 for conventional mining; $322,633 for in situ mining; $325,910 for heap leach; and $374,729 for disposal only; or

(A) if the application fee is not sufficient to cover costs incurred by the commission, then the applicant shall submit a supplemental fee to recover the actual costs incurred by the commission for review of the application and any hearings associated with an application for commercial by-product material disposal under Subchapter L of this chapter in accordance with Texas Health and Safety Code, §401.301(g);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(b) An annual license fee shall be paid for each license issued under Subchapters F, G, K, L, and M of this chapter. The amount of each annual fee is as follows:

(1) facilities regulated under Subchapter F of this chapter: $25,000;

(2) facilities regulated under Subchapter G of this chapter: $8,400;

(3) facilities regulated under Subchapter K of this chapter: $25,000;

(4) facilities regulated under Subchapter L of this chapter that are operational: $60,929.50; or

(A) if the annual fee is not sufficient to cover costs incurred by the commission, a holder of a license for commercial by-product material disposal issued under Subchapter L of this chapter shall submit a supplemental license fee sufficient to recover the actual costs incurred by the commission. This fee shall recover for the state the actual expenses arising from the regulatory activities associated with the license in accordance with Texas Health and Safety Code, §401.412(d);

(B) the executive director shall invoice for the amount of the costs incurred quarterly. Payment shall be made within 30 days following the date of the invoice;

(5) facilities regulated under Subchapter L of this chapter that are in closure: $60,929.50;

(6) facilities regulated under Subchapter L of this chapter that are in post-closure: $52,011.50 for conventional mining; $26,006 for in situ mining; and $52,011.50 for disposal only;

(7) facilities regulated under Subchapter L of this chapter, if additional noncontiguous source material recovery facility sites are authorized under the same license, the annual fee shall be increased by 25% for each additional site and 50% for sites in closure;

(8) facilities regulated under Subchapter L of this chapter, if an authorization for disposal of by-product material is added to a license, the annual fee shall be increased by 25%;

(9) facilities regulated under Subchapter L of this chapter, the following one-time fees apply if added after an environmental assessment has been completed on a facility:

(A) $28,658 for in situ wellfield on noncontiguous property;

(B) $71,651 for in situ satellite;

(C) $11,235 for wellfield on contiguous property;

(D) $50,756 for non-vacuum dryer; or

(E) $71, 651 for disposal (including processing, if applicable) of by-product material; or

(10) facilities regulated under Subchapter M of this chapter: $3,830 for Waste Processing - Class I Exempt; $39,959 for Waste Processing - Class I; $94,661 for Waste Processing - Class II; and $273,800 for Waste Processing - Class III.

(c) An application for a major amendment of a license issued under Subchapter F, G, K, L, or M of this chapter must be accompanied by an application fee of $10,000.

(d) An application for renewal of a license issued under Subchapter F, G, K, L, or M of this chapter must be accompanied by an application fee of $35,000.

(e) Upon permanent cessation of all disposal activities and approval of the final decommissioning plan, holders of licenses issued under Subchapter F, K, L, or M of this chapter shall use the applicable fee schedule for subsections (b) and (c) of this section.

(f) For any application for a license issued under this chapter, the commission may assess and collect additional fees from the applicant to recover costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application. The executive director shall send an invoice for the amount of the costs incurred during the period September 1 through August 31 of each year. Payment shall be made within 30 days following the date of the invoice.

~~[(g) If a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one year period prior to June 17, 2007, the licensee is not subject to an annual fee under subsection (b) of this section until the expiration of the second year for which the biennial fee was paid.]~~

(g) ~~[(h)]~~ The commission may charge an additional 5% of annual fee assessed under subsection (b) of this section and §336.103 of this title (relating to Schedule of Fees for Subchapter H Licenses). The fee is non-refundable and will be deposited to the perpetual care account.

(1) The fees collected by the agency in accordance with this subsection shall be deposited to the credit of the Environmental Radiation and Perpetual Care Account, until the fees collectively total $500,000.

(2) If the balance of fees collected in accordance with this subsection is subsequently reduced to $350,000 or less, the agency shall reinstitute assessment of the fee until the balance reaches $500,000.

(h) ~~[(i)]~~ The holder of a license authorizing disposal of a radioactive substance from other persons shall remit to the commission 5% of the holder's gross receipts received from disposal operations under a license as required in Texas Health and Safety Code, §401.271(a)(1). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

(i) ~~[(j)]~~ The holder of a license authorizing disposal of a radioactive substance from other persons shall remit directly to the host county 5% of the gross receipts disposal operations under a license as required in Texas Health and Safety Code, §401.271(a)(2). Payment shall be made within 30 days of the end of each quarter. The end of each quarter is the last day of the months of November, February, May, and August. This subsection does not apply to the disposal of compact waste or federal facility waste.

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

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

TRD-202402626
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.208

Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.208. Radiation Safety Officer.

(a) Qualifications of the designated radiation safety officer (RSO) are adequate for the purpose requested and include as a minimum:

(1) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;

(2) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the RSO at a uranium or mineral extraction/re-

covery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and

(3) have additional [~~at least four weeks of specialized~~] training in health physics or radiation safety as determined by the Executive Director [~~applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency~~].

(b) The specific duties of the RSO include, but are not limited to, the following:

(1) to establish and oversee operating, safety, emergency, and as low as reasonably achievable procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(2) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(3) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(4) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §336.405 of this title (relating to Notifications and Reports to Individuals);

(5) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(6) to investigate and cause a report to be submitted to the executive director for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(7) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(8) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(9) to ensure that records are maintained as required by this chapter;

(10) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;

(11) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(12) to perform an inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to, the following:

(A) isotope(s);

(B) quantity(ies);

(C) radioactivity(ies); and

(D) date inventory is performed.

(13) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(14) to serve as the primary contact with the agency.

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

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

TRD-202402628
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357

Statutory Authority

The rule changes are proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.329. Exemptions to Labeling Requirements.

A licensee is not required to label:

(1) containers holding licensed material in quantities less than those listed in §336.360, Appendix C, of this title (relating to Quantities of Licensed Material Requiring Labeling);

(2) containers holding licensed material in concentrations less than those specified in Table III of §336.359, Appendix B, of this title (relating to Annual Limits on Intake (ALI) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage);

(3) containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this subchapter;

(4) containers when they are in transport and packaged and labeled in accordance with the rules of the United States Department of Transportation (labeling of packages containing radioactive material is required by the United States Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by rules in 49 CFR 173.403 [~~(m) and (w) as amended through September 29, 1989,~~] and 49 CFR 173.421-424 [~~49 CFR 172.436-172.440 as amended through December 20, 1991)~~];

(5) containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record. (Examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells.) The record shall be retained as long as the containers are in use for the purpose indicated on the record; or

(6) installed manufacturing or process equipment, such as piping and tanks.

§336.331. Transfer of Radioactive Material.

(a) The licensee shall not transfer source material, by-product [~~byproduct~~] material, or other licensed radioactive material except as authorized under the rules in this subchapter.

(b) Except as otherwise provided in the license and subject to the provisions of subsections (c) and (d) of this section, a licensee shall transfer source material, by-product [~~byproduct~~] material, or other licensed radioactive material:

(1) to the agency (A licensee shall transfer material to the agency only after receiving prior approval from the agency. If the material to be transferred is special nuclear material, the quantity must not be sufficient to form a critical mass.);

(2) to the United States Department of Energy;

(3) to any person exempt from licensing requirements by the Texas Department of State Health Services (DSHS) under the Texas Health and Safety Code, §401.106(a), the rules in this chapter, or exempt from the licensing requirements of the United States Nuclear Regulatory Commission (NRC) or an Agreement State, to the extent permitted by those exemptions;

(4) to any person authorized to receive this material under terms of a specific or a general license or its equivalent issued by the commission, DSHS, NRC, or any Agreement State, or to any person authorized to receive this material by the federal government; or

(5) as otherwise authorized by the commission in writing by DSHS, any Agreement State, or the federal government.

(c) Before transferring source material, by-product [~~byproduct~~] material, or other radioactive material to a specific licensee of the commission, DSHS, NRC, or an Agreement State or to a general licensee who is required to register with DSHS, NRC, or an Agreement State prior to receipt of the source material, by-product [~~byproduct~~] material, or other radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(d) The following methods for the verification required by subsection (c) of this section are acceptable.

(1) The transferor shall possess and have read a current copy of the transferee's specific license or certificate of registration.

(2) The transferor may possess a written certification by the transferee that the transferee is authorized by the license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date.

(3) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or certificate of registration to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or certificate of registration number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days.

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the commission, DSHS, NRC, or an Agreement State as to the identity of licensees and registrants and the scope and expiration dates of licenses and registrations.

(5) When none of the methods of verification described in paragraphs (1) - (4) of this subsection are readily available or when a transferor desires to verify that information received by one of these methods is correct or up-to-date, the transferor may obtain and record confirmation from the commission, DSHS, NRC, or an Agreement State that the transferee is licensed to receive the source material, by-product [~~byproduct~~] material, or other radioactive material.

(e) Transportation of radioactive material shall also be subject to applicable rules of the United States Department of Transportation, United States Postal Service, NRC, or DSHS.

(f) The licensee shall keep records showing the transfer of any source material, by-product [~~byproduct~~] material, or other radioactive material.

(g) Transfer of low-level radioactive waste by a waste generator, waste collector, or waste processor who ships this waste either directly, or indirectly through a collector or processor, to a licensed land disposal facility shall also be subject to applicable rules of DSHS. A commission licensee who transfers low-level radioactive waste for disposal at a licensed land disposal facility shall also be subject to applicable rules of DSHS with respect to transfers.

(h) A licensed land disposal facility operator shall use and comply with the requirements of §336.363 of this title (relating to Appendix F. Requirements for Receipt of Low-Level Radioactive Waste for Disposal at Licensed Land Disposal Facilities and Uniform Manifests).

(i) Any licensee shipping by-product [~~byproduct~~] material, as defined in §336.2(16)(C) - (E) of this title (relating to Definitions) concerning the definition of by-product [~~byproduct~~] material, intended for ultimate disposal must document the information required on the shipping manifest and transfer this recorded manifest information to the intended consignee.

§336.332. Preparation of Radioactive Material for Transport.

(a) No licensee shall deliver any source material, by-product [~~byproduct~~] material, or other licensed radioactive material to a carrier for transport, unless:

(1) the licensee complies with the applicable requirements of the rules, appropriate to the mode of transport, of the United States Department of Transportation insofar as those rules relate to the packing of radioactive material and to the monitoring, marking, and labeling of those packages or containers;

(2) the licensee establishes procedures for opening and closing packages and containers in which radioactive material is transported to provide safety and to assure that, prior to the delivery to a carrier for transport, each package or container is properly closed for transport; and

(3) the licensee assures that any special instructions needed to safely open the package or container are sent to or have been made available to the consignee prior to delivery of a package or container to a carrier for transport.

(b) For the purpose of subsection (a) of this section, licensees who transport their own licensed material as private carriers are considered to have delivered the material to a carrier for transport.

§336.336. Tests.

(a) Each licensee shall perform, upon instructions from the executive director, or shall permit the executive director to perform such tests as the executive director deems appropriate or necessary for the administration of the rules in this chapter including, but not limited to, tests of:

(1) source material, by-product [~~byproduct~~] material, or other licensed radioactive material;

(2) facilities where these materials are used, stored, or disposed;

(3) radiation detection and monitoring instruments; and

(4) other equipment and devices used in connection with utilization, storage, or disposal of source material, by-product [~~byproduct~~] material, or other licensed radioactive material.

(b) The requirements of this section do not apply to licenses issued under Subchapter H of this chapter (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste).

§336.341. General Recordkeeping Requirements for Licensees.

(a) Each licensee shall use the units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with §336.605 of this title (relating to Surface Contamination Limits for Facilities, Equipment, and Materials) and §336.364, Appendix G, of this title (relating to Acceptable Surface Contamination Levels).

(b) In the records required by this chapter, the licensee may record quantities in International System of Units (SI) units in parentheses following each of the units specified in subsection (a) of this section. However, all quantities must be recorded as stated in subsection (a) of this section.

(c) Notwithstanding the requirements of subsection (a) of this section, information on shipment manifests for wastes received at a licensed land disposal facility, as required by §336.331(h) of this title (relating to Transfer of Radioactive Material), shall be recorded in SI units (becquerel, gray, and sievert) or in SI and units as specified in subsection (a) of this section.

(d) The licensee shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, and committed effective dose equivalent.

(e) Each licensee shall maintain records showing the receipt, transfer, and disposal of all source material, by-product [~~byproduct~~] material, or other licensed radioactive material. Each licensee shall also maintain any records and make any reports as may be required by the conditions of the license, by the rules in this chapter, or by orders of the commission. Copies of any records or reports required by the license, rules, or orders shall be submitted to the executive director or commission on request. All records and reports required by the license, rules, or orders shall be complete and accurate.

(f) The licensee shall retain each record that is required by the rules in this chapter or by license conditions for the period specified by the appropriate rule or license condition. If a retention period is not otherwise specified, each record shall be maintained until the commission terminates each pertinent license requiring the record.

(g) If there is a conflict between the commission's rules, license condition, or other written approval or authorization from the executive director pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

(h) The executive director may require the licensee to provide the commission with copies of all records prior to termination of the license.

§336.351. Reports of Transactions Involving Nationally Tracked Sources.

(a) Each licensee who manufactures, transfers, receives, disassembles, or disposes of a nationally tracked source shall complete and submit to the United States Nuclear Regulatory Commission (NRC) a National Source Tracking Transaction Report as specified in paragraphs (1) - (6) of this subsection for each type of transaction.

(1) Each licensee who manufactures a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report must include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source;

(D) the radioactive material in the source;

(E) the initial source strength in becquerels (curies) at the time of manufacture; and

(F) the manufacture date of the source.

(2) Each licensee that transfers a nationally tracked source to another person shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name and license number of the recipient facility and the shipping address;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the shipping date;

(I) the estimated arrival date; and

(J) for nationally tracked sources transferred as waste under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification of the container with the nationally tracked source.

(3) Each licensee that receives a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the name, address, and license number of the person that provided the source;

(D) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(E) the radioactive material in the source;

(F) the initial or current source strength in becquerels (curies);

(G) the date for which the source strength is reported;

(H) the date of receipt; and

(I) for material received under a Uniform Low-Level Radioactive Waste Manifest, the waste manifest number and the container identification with the nationally tracked source.

(4) Each licensee that disassembles a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the manufacturer, model, and serial number of the source or, if not available, other information to uniquely identify the source;

(D) the radioactive material in the source;

(E) the initial or current source strength in becquerels (curies);

(F) the date for which the source strength is reported; and

(G) the disassemble date of the source.

(5) Each licensee who disposes of a nationally tracked source shall complete and submit to NRC a National Source Tracking Transaction Report. The report shall include the following information:

(A) the name, address, and license number of the reporting licensee;

(B) the name of the individual preparing the report;

(C) the waste manifest number;

(D) the container identification with the nationally tracked source;

(E) the date of disposal; and

(F) the method of disposal.

(6) The reports discussed in paragraphs (1) - (6) of this subsection shall be submitted to NRC by the close of the next business day after the transaction. A single report may be submitted for multiple sources and transactions. The reports shall be submitted to the National Source Tracking System by using the following:

(A) the on-line National Source Tracking System;

(B) electronically using a computer-readable format;

(C) by facsimile;

(D) by mail to the address on the National Source Tracking Transaction Report Form (NRC Form 748); or

(E) by telephone with follow-up by facsimile or mail.

(7) Each licensee shall correct any error in previously filed reports or file a new report for any missed transaction within five business days of the discovery of the error or missed transaction. Such errors may be detected by a variety of methods such as administrative reviews or by physical inventories required by regulation. In addition, each licensee shall reconcile the inventory of nationally tracked sources possessed by the licensee against that licensee's data in the National Source Tracking System. The reconciliation shall be conducted during the month of January in each year. The reconciliation process shall include resolving any discrepancies between the National Source Tracking System and the actual inventory by filing the reports identified by paragraphs (1) - (6) of this subsection. By January 31 of each year, each licensee shall submit to the National Source Tracking System confirmation that the data in the National Source Tracking System is correct.

~~[(8) Each licensee that possesses Category 1 or Category 2 nationally tracked sources listed in subsection (b) of this section shall report its initial inventory of Category 1 or Category 2 nationally tracked sources to the National Source Tracking System by January 31, 2009. The information may be submitted to NRC by using any of the methods identified by paragraph (6)(A) - (E) of this subsection. The initial inventory report shall include the following information:~~

~~[(A) the name, address, and license number of the reporting licensee;~~

~~[(B) the name of the individual preparing the report;~~

~~[(C) the manufacturer, model, and serial number of each nationally tracked source or, if not available, other information to uniquely identify the source;~~

~~[(D) the radioactive material in the sealed source;~~

~~[(E) the initial or current source strength in becquerels (curies); and~~

~~[(F) the date for which the source strength is reported.~~

(b) Nationally tracked source thresholds. The Terabecquerel (TBq) values are the regulatory standards. The curie values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only and are rounded after conversion. The following table contains nationally tracked source thresholds.
Figure: 30 TAC §336.351(b) (No change.)

§336.357. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.

(a) Specific exemption. A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of subsections (b) - (w) of this section. However, any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kilograms (4,409 pounds) is not exempt from the requirements of subsections (b) - (w) of this section. The licensee shall implement the following requirements to secure the radioactive waste:

(1) use continuous physical barriers that allow access to the radioactive waste only through established access control points;

(2) use a locked door or gate with monitored alarm at the access control point;

(3) assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

(4) immediately notify the local law enforcement agency (LLEA) and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

(b) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(1) General.

(A) Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subsection and subsections (c) - (h) of this section.

(B) An applicant for a new license and each licensee, upon application for modification of its license, that would become newly subject to the requirements of this subsection and subsections (c) - (h) of this section, shall implement the requirements of this subsection and subsections (c) - (h) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (c) - (h) of this section shall implement the provisions of this subsection and subsections (c) - (h) of this section before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. The licensee's access authorization program must ensure that the individuals specified in paragraph (3)(A) of this subsection are trustworthy and reliable.

(3) Applicability.

(A) Licensees shall subject the following individuals to an access authorization program:

(i) any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) reviewing officials.

(B) Licensees need not subject the categories of individuals listed in subsection (f)(1) of this section to the investigation elements of the access authorization program.

(C) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

(D) Licensees may include individuals needing access to safeguards information-modified handling under 10 Code of Federal Regulations (CFR) Part 73, in the access authorization program under this subsection and subsections (c) - (h) of this section.

(c) Access authorization program requirements.

(1) Granting unescorted access authorization.

(A) Licensees shall implement the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section for granting initial or reinstated unescorted access authorization.

(B) Individuals determined to be trustworthy and reliable shall also complete the security training required by subsection (j)(3) of this section before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(2) Reviewing officials.

(A) Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

(B) Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The licensee shall provide a copy of the oath or affirmation certifications of any and all individuals to the executive director once completed. The fingerprints of the named reviewing official must be taken by a law enforcement agency, Federal or State agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a State to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with subsection (d)(3) of this section.

(C) Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

(D) Reviewing officials cannot approve other individuals to act as reviewing officials.

(E) A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

(i) the individual has undergone a background investigation that included fingerprinting and a Federal Bureau of Investigations (FBI) criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

(ii) the individual is subject to a category listed in subsection (f)(1) of this section.

(3) Informed consent.

(A) Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the

background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is found during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of subsection (d)(2) of this section. A signed consent must be obtained prior to any reinvestigation.

(B) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(i) if an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

(ii) the withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(4) Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by subsection (b) of this section, this subsection, and subsections (d) - (h) of this section is sufficient cause for denial or termination of unescorted access.

(5) Determination basis.

(A) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section.

(B) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of subsection (b) of this section, this subsection, and subsections (d) - (h) of this section and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(C) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(D) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

(E) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirements, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(6) Procedures. Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(7) Right to correct and complete information.

(A) Prior to any final adverse determination, licensees shall provide each individual subject to subsection (b) of this section, this subsection, and subsections (d) - (h) of this section with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of one year from the date of the notification.

(B) If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306, as set forth in 28 CFR §§16.30 - 16.34. In the latter case, the FBI will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record is made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(8) Records.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(B) The licensee shall retain a copy of the current access authorization program procedures as a record for three years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(C) The licensee shall retain the list of persons approved for unescorted access authorization for three years after the list is superseded or replaced.

(d) Background investigations.

(1) Initial investigation. Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the seven years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

(A) fingerprintings and an FBI identification and criminal history records check in accordance with subsection (e) of this section;

(B) verification of true identity. Licensees shall verify the true identity of the individual applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with subsection (g) of this section. Licensees shall certify in writing that the identification was properly reviewed and shall maintain the certification and all related documents for review upon inspection;

(C) employment history verification. Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent seven years before the date of application;

(D) verification of education. Licensees shall verify the individual's education during the claimed period;

(E) character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under subsections (b) and (c) of this section, this subsection, and subsections (e) - (h) of this section must be limited to whether the individual has been and continues to be trustworthy and reliable;

(F) the licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the individual (e.g., seek references not supplied by the individual); and

(G) if a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee, but at least after 10 business days of the request or if the licensee is unable to reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation and attempt to obtain the information from an alternate source.

(2) Grandfathering.

(A) Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

(B) Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the Security Orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or a Security Order. Security Order, in this context, refers to any order that was issued by the United States Nuclear Regulatory Commission (NRC) that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(3) Reinvestigations. Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with subsection (e) of this section. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(e) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(1) General performance objective and requirements.

(A) Except for those individuals listed in subsection (f) of this section and those individuals grandfathered under subsection (d)(2) of this section, each licensee subject to the provisions of subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the NRC for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(B) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(C) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) the individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) the previous access was terminated under favorable conditions.

(D) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this section, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of subsection (g)(3) of this section.

(E) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(2) Prohibitions.

(A) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) an arrest more than one year old for which there is no information of the disposition of the case; or

(ii) an arrest that resulted in dismissal of the charge or an acquittal.

(B) Licensees may not use information received from a criminal history records check obtained under subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(3) Procedures for processing of fingerprint checks.

(A) For the purpose of complying with subsections (b) - (d) of this section, this subsection, and subsections (f) - (h) of this section, licensees shall use an appropriate method listed in 10 CFR §37.7 to submit to the United States Nuclear Regulatory Commission, Director, Division of Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop T-07D04M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by emailing MAILSVS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at *https://www.nrc.gov/security/chp.html*.

(B) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Division of Physical and Cyber Security Policy by e-mailing *Crimhist.Resource@nrc.gov.*) Combined payment for multiple applications is acceptable. The NRC publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the Licensee Criminal History Records Checks & Firearms Background Check information page at *https://www.nrc.gov/security/chp.html* and see the link for How do I determine how much to pay for the request?).

(C) The NRC will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(f) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(1) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation, are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(A) an employee of the NRC or of the Executive Branch of the United States (U.S.) Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(B) a Member of Congress;

(C) an employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(D) the Governor of a State or his or her designated State employee representative;

(E) Federal, State, or local law enforcement personnel;

(F) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(G) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under §274.i. of the Atomic Energy Act;

(H) representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(I) emergency response personnel who are responding to an emergency;

(J) commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(K) package handlers at transportation facilities such as freight terminals and railroad yards;

(L) any individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(M) any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(2) Fingerprinting, and the identification and criminal history records checks required by §149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last five years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

(A) National Agency Check;

(B) Transportation Worker Identification Credentials under 49 CFR Part 1572;

(C) Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR Part 555;

(D) Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR Part 73;

(E) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR Part 1572; and

(F) Customs and Border Protection's Free and Secure Trade Program.

(g) Protection of information.

(1) Each licensee who obtains background information on an individual under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section shall establish and maintain a system of files and written procedures for protection of the records and the personal information from unauthorized disclosure.

(2) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be provided to another licensee:

(A) upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

(B) the recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(4) The licensee shall make background investigation records obtained under subsections (b) - (f) of this section, this subsection, and subsection (h) of this section available for examination by an authorized representative of the commission to determine compliance with the regulations and laws.

(5) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI or a copy of these records if the individual's file has been transferred on an individual for three years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(h) Access authorization program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of subsections (b) - (g) of this section and this subsection and that comprehensive actions are taken to correct any noncompliance identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access authorization program content and implementation.

(2) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) Review records must be maintained for three years.

(i) Security program.

(1) Applicability.

(A) Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this subsection and subsections (j) - (q) of this section.

(B) An applicant for a new license, and each licensee that would become newly subject to the requirements of this subsection and subsections (j) - (q) of this section upon application for modification of its license, shall implement the requirements of this subsection and subsections (j) - (q) of this section, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

(C) Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this subsection and subsections (j) - (q) of this section shall provide written notification to the commission at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(2) General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(3) Program features. Each licensee's security program must include the program features, as appropriate, described in subsections (j) - (p) of this section.

(j) General security program requirements.

(1) Security plan.

(A) Each licensee identified in subsection (i)(1) of this section shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by subsection (i) of this section, this subsection, and subsections (k) - (q) of this section. The security plan must, at a minimum:

(i) describe the measures and strategies used to implement the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section; and

(ii) identify the security resources, equipment, and technology used to satisfy the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section.

(B) The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

(C) A licensee shall revise its security plan as necessary to ensure the effective implementation of the executive director's requirements. The licensee shall ensure that:

(i) the revision has been reviewed and approved by the individual with overall responsibility for the security program; and

(ii) the affected individuals are instructed on the revised plan before the changes are implemented.

(D) The licensee shall retain a copy of the current security plan as a record for three years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for three years after the record is superseded.

(2) Implementing procedures.

(A) The licensee shall develop and maintain written procedures that document how the requirements of subsection (i) of this section, this subsection, and subsections (k) - (q) of this section and the security plan will be met.

(B) The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

(C) The licensee shall retain a copy of the current procedure as a record for three years after the procedure is no longer needed. Superseded portions of the procedure must be retained for three years after the record is superseded.

(3) Training.

(A) Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

(i) the licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material and the purposes and functions of the security measures employed;

(ii) the responsibility to report promptly to the licensee any condition that causes or may cause a violation of the requirements of the commission, the NRC, or any Agreement State;

(iii) the responsibility of the licensee to report promptly to the LLEA and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

(iv) the appropriate response to security alarms.

(B) In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

(C) Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

(i) review of the training requirements of this paragraph and any changes made to the security program since the last training;

(ii) reports on any relevant security issues, problems, and lessons learned;

(iii) relevant results of commission inspections; and

(iv) relevant results of the licensee's program review and testing and maintenance.

(D) The licensee shall maintain records of the initial and refresher training for three years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(4) Protection of information.

(A) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(B) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

(C) Before granting an individual access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(i) evaluate an individual's need to know the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access; and

(ii) if the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in subsection (d)(1)(B) - (G) of this section.

(D) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) the categories of individuals listed in subsection (f)(1) of this section; or

(ii) security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in subsection (d)(1)(B) - (G) of this section, has been provided by the security service provider.

(E) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

(F) Licensees shall maintain a list of persons currently approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

(G) When not in use, the licensee shall store its security plan, implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in non-removable electronic form must be password protected.

(H) The licensee shall retain as a record for three years after the document is no longer needed:

(i) a copy of the information protection procedures; and

(ii) the list of individuals approved for access to the security plan, implementing procedures, or the list of individuals that have been approved for unescorted access.

(k) LLEA coordination.

(1) A licensee subject to subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

(A) a description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with subsections (i) and (j) of this section, this subsection, and subsections (l) - (q) of this section; and

(B) a notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(2) The licensee shall notify the executive director within three business days if:

(A) the LLEA has not responded to the request for coordination within 60 days of the coordination request; or

(B) the LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(3) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for three years.

(4) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(l) Security zones.

(1) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee established security zones. Security zones may be permanent or temporary.

(2) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(3) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

(A) isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone; or

(B) direct control of the security zone by approved individuals at all times; or

(C) a combination of continuous physical barriers and direct control.

(4) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(5) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(m) Monitoring, detection, and assessment.

(1) Monitoring and detection.

(A) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source or provide for an alarm and response in the event of a loss of the capability to continuously monitor and detect unauthorized entries.

(B) Monitoring and detection must be performed by:

(i) a monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(ii) electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) a monitored video surveillance system;

(iv) direct visual surveillance by approved individuals located within the security zone; or

(v) direct visual surveillance by a licensee designated individual located outside the security zone.

(C) A licensee subject to subsections (i) - (l) of this section, this subsection, and subsections (n) - (q) of this section shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) for category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(I) electronic sensors linked to an alarm;

(II) continuous monitored video surveillance; or

(III) direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(2) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(3) Personnel communications and data transmission. For personnel and automated or electronic systems supporting the

licensee's monitoring, detection, and assessment systems, licensees shall:

(A) maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

(B) provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(4) Response. Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(n) Maintenance and testing.

(1) Each licensee subject to subsections (i) - (m) of this section, this subsection, and subsections (o) - (q) of this section shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this section must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(2) The licensee shall maintain records on the maintenance and testing activities for three years.

(o) Requirements for mobile devices. Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(1) have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(2) for devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

(p) Security program review.

(1) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of subsections (i) - (o) of this section, this subsection, and subsection (q) of this section and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

(2) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) The licensee shall maintain the review documentation for three years.

(q) Reporting of events.

(1) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224. In no case shall the notification to the commission or the NRC be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(2) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than four hours after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224.

(3) The initial telephonic notification required by paragraph (1) of this subsection must be followed, within a period of 30 days, by a written report submitted to the executive director. The report must include sufficient information for commission analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

(r) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material. A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the commission, the NRC, or an Agreement State shall meet the license verification provisions listed in this subsection instead of those listed in §336.331(d) of this title (relating to Transfer of Radioactive Material):

(1) Any licensee transferring category 1 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(2) Any licensee transferring category 2 quantities of radioactive material to a licensee of the commission, the NRC, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(3) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunc-

tional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(4) The transferor shall keep a copy of the verification documentation as a record for three years.

(s) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit. The shipping licensee shall be responsible for meeting the requirements of subsection (r) of this section, this subsection, and subsections (t) - (w) of this section unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under subsection (r) of this section, this subsection, and subsections (t) - (w) of this section.

(t) Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(1) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

(A) preplan and coordinate shipment arrival and departure times with the receiving licensee;

(B) preplan and coordinate shipment information with the governor or the governor's designee of any state through which the shipment will pass to:

(i) discuss the state's intention to provide law enforcement escorts; and

(ii) identify safe havens; and

(C) document the preplanning and coordination activities.

(2) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(3) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(4) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (2) of this subsection, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(5) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof as a record for three years.

(u) Advance notification of shipment of category 1 quantities of radioactive material. As specified in paragraphs (1) and (2) of this subsection, each licensee shall provide advance notification to the NRC, to the executive director, and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(1) Procedures for submitting advance notification.

(A) The notification must be made to the executive director, to the commission, and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at *https://scp.nrc.gov/special/designee.pdf*. A list of the contact information is also available upon request from the Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(B) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(C) A notification delivered by any means other than mail must reach the commission and the executive director at least four days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

(2) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(A) the name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(B) the license numbers of the shipper and receiver;

(C) a description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(D) the point of origin of the shipment and the estimated time and date that shipment will commence;

(E) the estimated time and date that the shipment is expected to enter each state along the route;

(F) the estimated time and date of arrival of the shipment at the destination; and

(G) a point of contact, with a telephone number, for current shipment information.

(3) Revision notice.

(A) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee, to the executive director, and to the commission.

(B) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with paragraph (2) of this subsection and subparagraph (A) of this paragraph. The licensee shall also immediately notify the commission and the executive director of any such changes.

(4) Cancellation notice. Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, to the executive director, and to the commission. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The

licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled.

(5) Records. The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

(6) Protection of information. State officials, State employees, and other individuals, whether or not licensees of the commission, NRC, or an Agreement State, who receive schedule information of the kind specified in paragraph (2) of this subsection shall protect that information against unauthorized disclosure as specified in subsection (j)(4) of this section.

(v) Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(1) Shipments by road.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, seven days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(I) notifications to the communication center and law enforcement agencies;

(II) communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(III) loss of communications; and

(IV) responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

(B) Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

(C) Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(2) Shipments by rail.

(A) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

(B) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control;

(ii) use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(3) Investigations. Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a cate-

gory 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(w) Reporting of events.

(1) The shipping licensee shall notify the appropriate LLEA and the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 within one hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by subsection (v)(3) of this section, the shipping licensee will provide agreed upon updates to the executive director on the status of the investigation.

(2) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 within four hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the executive director.

(3) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment of category 1 radioactive material.

(4) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(5) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(6) The shipping licensee shall notify the Office of Compliance and Enforcement 24-hour Emergency Response at 1-800-832-8224 as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(7) The initial telephonic notification required by paragraphs (1) - (4) of this subsection must be followed within a period of 30 days by a written report submitted to the executive director. A written report is not required for notifications on suspicious activities required by paragraphs (3) and (4) of this subsection. The report must set forth the following information:

(A) a description of the licensed material involved, including kind, quantity, and chemical and physical form;

(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the licensed material involved;

(D) actions that have been taken, or will be taken, to recover the material; and

(E) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(8) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

(x) Form of records. Each record required by this section must be legible throughout the retention period specified in regulation by the licensing authority. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(y) Record retention. Licensees shall maintain the records that are required in this section for the period specified by the appropriate regulation. If a retention period is not otherwise specified, these records must be retained until the executive director terminates the facility's license. All records related to this section may be destroyed upon executive director termination of the facility license.

(z) Category 1 and category 2 radioactive materials. The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The Ci values are provided for practical usefulness only.
Figure: 30 TAC §336.357(z)
[~~Figure: 30 TAC §336.357(z)~~]

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

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

TRD-202402630
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §336.625

Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product

material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.625. Expiration and Termination of Licenses.

(a) Each license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal not less than 30 days before the expiration date stated in the existing license. If an application for renewal in proper form has been filed at least 30 days before the expiration date stated in the existing license, the existing license shall not expire until the application has been finally determined by the commission. For the purposes of this section, "proper form" shall mean that the application includes the information required by §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites) or §336.513 of this title (relating to Technical Requirements for Active Disposal Sites). The existing license expires at the end of the day on which the commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(b) Each license revoked by the commission expires at the end of the day on the date of the commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by commission order.

(c) Each license continues in effect, beyond the expiration date if necessary, with respect to possession of source material, by-product [~~byproduct~~] material, or other radioactive material until the commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving source material, by-product [~~byproduct~~] material, or other radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with commission requirements.

(d) Within 60 days of the occurrence of any of the following, each licensee of an active disposal site shall provide written notification to the executive director:

(1) the license has expired under subsection (a) or (b) of this section; or

(2) the licensee has decided to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for unrestricted release in accordance with commission requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with commission requirements.

(e) The licensee of an active disposal site shall either:

(1) within 60 days of the occurrence for which notification is required by subsection (d) of this section, begin decommissioning its site or any separate building or outdoor area that contains residual radioactivity, according to an approved decommissioning plan, so that the building or outdoor area is suitable for release in accordance with commission requirements; or

(2) if no decommissioning plan has been submitted, submit a decommissioning plan to the executive director, including a signed statement adjusting the amount of financial assurance based upon the detailed cost estimate included in the decommissioning plan, within 12 months of the notification required by subsection (d) of this section and request an amendment of the license to incorporate the plan into the license; and

(3) begin decommissioning within 60 days of the approval of that plan by the commission.

(f) The licensee of an inactive disposal site licensed under §336.615 of this title (relating to Inactive Disposal Sites), shall provide notice of and begin decommissioning within 90 days of license renewal. The owner or operator of an unlicensed inactive disposal site must apply for a license to decommission the site and begin decommissioning within 90 days of license approval.

(g) All licensees shall follow a commission-approved closure plan for decontamination, decommissioning, restoration, and reclamation of buildings and the site.

(1) Coincident with the notification required by subsections (d) or (f) of this section, the licensee shall continue to maintain in effect all decommissioning financial assurance until the license is terminated by the commission.

(2) The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established under §336.613(f)(5) of this title (relating to Additional Requirements).

(3) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so on or before January 1, 1998.

(4) Following approval of the decommissioning plan, with the approval of the executive director, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(h) The executive director may grant in writing a request to extend the time periods established in subsections (d), (e), or (f) of this section, or to delay or postpone the decommissioning process, if the executive director determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted in writing no later than 30 days before notification under subsection (d) or (f) of this section. The schedule for decommissioning set forth in subsection (e) or (f) of this section may not commence until the executive director has made a determination on the request.

(i) Licenses, including expired licenses, will be terminated by the commission by written notice to the licensee when the executive director determines that:

(1) source material, by-product [~~byproduct~~] material, and other radioactive material has been properly disposed;

(2) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) the site is suitable for release;

(A) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with commission requirements; or

(B) other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with commission requirements;

(4) the licensee has paid any outstanding fees required by Subchapter B of this chapter (relating to Radioactive Substance Fees) and has resolved any outstanding notice(s) of violation issued to the licensee; and

(5) the licensee has complied with all other applicable decommissioning criteria required by this subchapter.

(j) A licensee may request that a subsite or a portion of a licensed area be released for unrestricted use before full license termination as long as release of the area of concern will not adversely impact the remaining unaffected areas and will not be recontaminated by ongoing authorized activities. When the licensee is confident that the area of concern will be acceptable to the state for release for unrestricted use, a written request for release for unrestricted use and agency confirmation of close-out work performed must be submitted to the executive director. The request should include a comprehensive report, accompanied by survey and sample results which show contamination is less than the limits specified in §336.603 of this title (relating to Radiological Criteria for Unrestricted Use), and an explanation of how ongoing authorized activities will not adversely affect the area proposed to be released. Upon confirmation by the executive director that the area of concern is indeed releasable for unrestricted use, the licensee may apply for a license amendment, if required.

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

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

TRD-202402631
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §336.701

Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.701. Scope and General Provisions.

(a) This subchapter establishes the procedures, criteria, and terms and conditions upon which the commission issues a license for the near-surface land disposal of low-level radioactive wastes and accelerator-produced radioactive material received from other persons. The rules in this subchapter apply to disposal of low-level radioactive waste and accelerator-produced radioactive material as defined in §336.2 of this title (relating to Definitions). For the purpose of this subchapter, the term "low-level radioactive waste" includes accelerator-produced radioactive material. If there is a conflict between the rules of the commission and the rules of this subchapter, the rules of this subchapter shall prevail. No person shall engage in disposal of low-level radioactive waste received from other persons except as authorized in a specific license issued under this subchapter. A licensee under this subchapter shall conduct processing of low-level radioactive waste received for disposal at the licensed site, incidental to the disposal of that waste, in accordance with provisions of the commission license which authorizes the disposal.

(b) A licensee authorized to dispose of low-level radioactive waste under the rules in this subchapter shall not accept for disposal:

(1) high-level radioactive waste as defined in 10 Code of Federal Regulations (CFR) §60.2 as amended through October 27, 1988 (53 FR 43421) (Definitions - high-level radioactive wastes in geologic repositories);

(2) by-product [~~byproduct~~] material as defined in §336.2(20)(B) [~~§336.2(13)(B)~~] of this title;

(3) spent or irradiated nuclear fuel;

(4) waste that is not generally acceptable for near-surface disposal as specified in §336.362 of this title (relating to Appendix E. Classification and Characteristics of Low-Level Radioactive Waste); or

(5) waste that exceeds Class C limitations as specified in §336.362 of this title.

(c) In addition to the requirements of this subchapter, all licensees, unless otherwise specified, are subject to the requirements of Subchapters A - E and G of this chapter (relating to General Provi-

sions; Radioactive Substance Fees; General Disposal Requirements; Standards for Protection Against Radiation; Notices, Instructions, and Reports to Workers and Inspections; and Decommissioning Standards). For Subchapter H licensees, the decommissioning and license termination criteria in Subchapter G of this chapter applies only to the ancillary surface facilities.

(d) On-site disposal of low-level radioactive waste at any site authorized under §336.501(b) of this title (relating to Scope and General Provisions), is not subject to licensing under this subchapter.

(e) Shipment and transportation of low-level radioactive waste to a licensed land disposal facility in Texas is subject to applicable rules of the Texas Department of Health, United States Department of Transportation, and United States Nuclear Regulatory Commission. Each shipment of low-level radioactive waste to a licensed land disposal facility in Texas is subject to inspection by the Texas Department of Health before shipment.

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

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

TRD-202402633
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

SUBCHAPTER M. LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES

30 TAC §336.1215

Statutory Authority

The rule change is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The proposed amendments implement THSC, Chapter 401, and are proposed to meet compatibility standards set by the United States Nuclear Regulatory Commission.

§336.1215. Issuance of Licenses.

(a) A license for a radioactive substances processing or storage facility may be issued if the agency finds reasonable assurance that:

(1) an application meets the requirements of the Texas Radiation Control Act and the rules of the agency;

(2) the proposed radioactive substances facility will be sited, designed, operated, decommissioned, and closed in accordance with this chapter;

(3) the issuance of the license will not be inimical to the health and safety of the public or the environment; and

(4) there is no reason to deny the license because of:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act;

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements in this chapter have been addressed; and

(5) qualifications of the designated radiation safety officer (RSO) as stated in §336.208 of this title (relating to Radiation Safety Officer) are adequate for the purpose requested in the application. [~~and include as a minimum:~~]

[~~(A) have earned at least a bachelor's degree in a physical or biological science, industrial hygiene, health physics, radiation protection, or engineering from an accredited college or university, or an equivalent combination of training and relevant experience, with two years of relevant experience equivalent to a year of academic study, from a uranium or mineral extraction/recovery, radioactive waste processing, or a radioactive waste or by-product material disposal facility;~~]

[~~(B) have at least one year of relevant experience, in addition to that used to meet the educational requirement, working under the direct supervision of the radiation safety officer at a uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal facility; and~~]

[~~(C) have at least four weeks of specialized training in health physics or radiation safety applicable to uranium or mineral extraction/recovery, radioactive waste processing, or radioactive waste or by-product material disposal operations from a course provider that has been evaluated and approved by the agency.~~]

(b) The agency may request, and the licensee must provide, additional information after the license has been issued to enable the agency to determine whether the license should be modified, suspended, or revoked.

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

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

TRD-202402634

Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 239-0634

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §§6.12, 6.14, 6.18

The Texas Department of Public Safety (the department) proposes amendments to §§6.12, 6.14, and 6.18, concerning Eligibility and Application Procedures for a License to Carry a Handgun. The amendments to §6.12, concerning Fingerprints, remove the peace officer exemption for required electronic fingerprints to comply with current Federal Bureau of Investigation requirements. The amendments to §6.14, concerning Proficiency Requirements, and §6.18, concerning First Responder Certification; Renewal of Certification, make conforming language changes for consistency and remove references to form numbers to allow the department flexibility in consolidating and renumbering forms.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be consistency with federal fingerprint requirements and simplicity in the identification of forms.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.1883, which authorizes the department to adopt by rule standards for the first responder training course as authorized in House Bill 1069, 87th Leg., R.S. (2021) and renumbered in House Bill 4595, 88th Leg., R.S. (2023); and Texas Government Code, §411.197, which authorizes the director to adopt rules to administer Subchapter H, License to Carry a Handgun.

Texas Government Code, §§411.004(3), 411.1883, and 411.197 are affected by this proposal.

§6.12. Fingerprints.

(a) Except as provided by §411.175 of the Act, electronic fingerprints are required for all original applicants and must be submitted through the department's approved vendor.

(b) For renewals, if fingerprints on file do not meet current Federal Bureau of Investigation or the department's quality standards, applicants will be required to submit a new set of electronic fingerprints to complete the renewal application process.

~~[(c) Active peace officers are not required to submit electronic fingerprints unless the fingerprints are not on file with the department or those on file are deficient.]~~

§6.14. Proficiency Requirements.

(a) The figure in this section provides the proficiency demonstration requirements applicable to applicants for either a license to carry a handgun or certification as a qualified handgun instructor.
Figure: 37 TAC §6.14(a) (No change.)

(b) An applicant for a license to carry a handgun [~~A handgun license applicant~~] must score at least 70% on both the written examination and the proficiency examination.

(c) An applicant for a license to carry a handgun [~~A handgun license applicant~~] will have three opportunities to pass the written examination and the proficiency examination within a 12-month [~~12 month~~] period.

(d) The qualified handgun instructor or approved online course provider must submit all examination failures to the department on the class completion notification. The notification must indicate if the failure occurred after the [~~handgun license~~] applicant had been given three opportunities to pass the examinations.

(e) On successful completion of the written or proficiency examinations, the qualified handgun instructor or approved online course provider, as applicable, shall certify the [~~handgun license~~] applicant has established his or her proficiency on the form and in the manner determined by the department.

(f) With the exception of first responder certificates of training issued under §6.18 of this title (relating to First Responder Certification; Renewal of Certification), all [~~All LTC-100 and LTC-101~~] certificates of training are valid for two years from the date they are issued by the qualified handgun instructor or approved online course provider [~~of issuance~~]. Any certificate of training that is required in conjunction with an application must be valid on the date the completed application is submitted to the department.

(g) The qualified handgun instructor shall require all [~~handgun license~~] applicants for a license to carry a handgun to complete the range instruction part of the handgun proficiency course before allowing a physical demonstration of handgun proficiency.

§6.18. First Responder Certification; Renewal of Certification.

(a) A [~~handgun~~] license holder who is also a first responder, as defined in Section 46.01, Penal Code, may obtain the first responder certification by:

(1) successfully completing the first responder certification course offered by a qualified handgun instructor who is certified as a first responder instructor; and

(2) submitting a request for a first responder certification, including the certificate of completion [~~(LTC-103)~~] provided by the first responder instructor and any documentation requested by the department establishing the requestor's employment as a first responder.

(b) The first responder certificate of training [~~(LTC-103)~~] may be submitted to the department within one year from the date it was issued by the qualified handgun instructor [~~of issuance~~]. The first responder certificate of training must be valid on the date it is submitted to the department.

(c) The first responder certification must be renewed annually by completing the required continuing education course provided by a certified first responder instructor and submitting the certificate of training [~~(LTC-103)~~] to the department. The certificate of continuing education training is valid for six months from the date of issuance. The certificate of continuing education training must be valid on the date the original first responder certificate expires.

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

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

TRD-202402614
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

SUBCHAPTER F. FIRST RESPONDER INSTRUCTOR CERTIFICATION

37 TAC §6.96

The Texas Department of Public Safety (the department) proposes amendments to §6.96, concerning First Responder Certification Courses, by making minor changes in terminology to maintain consistency with proposed amendments to §§6.12, 6.14, and 6.18.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be consistency and simplification of the rules.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.1883, which authorizes the department to adopt by rule standards for the first responder training course as authorized in House Bill 1069, 87th Leg., R.S. (2021) and renumbered in House Bill 4595, 88th Leg., R.S. (2023); and Texas Government Code, §411.197, which authorizes the director to adopt rules to administer Subchapter H, License to Carry a Handgun.

Texas Government Code, §§411.004(3), 411.1883, and 411.197 are affected by this proposal.

§6.96. First Responder Certification Courses.

(a) The first responder training course described in Government Code, §411.184 may only be provided by a certified first responder instructor, and must be taught using the department approved curriculum, training materials, and examinations.

(b) Following the classroom portion and the practical exercises, applicants [~~students~~] must pass both the department approved final written examination and proficiency demonstration with a score of 90% or better on each. Applicants [~~Students~~] with a score of less than 90% on the final written examination and the proficiency demonstration will not receive a first responder certificate from the department.

(c) On completion of the first responder training course, the certified first responder instructor who conducted the course shall submit a report within five business days to the department indicating whether the applicants [~~participants~~] in the course passed or failed. The report must be submitted in the manner determined by the department.

(d) Certified first responder instructors must comply with this chapter's rules relating to [~~license to a~~] qualified handgun instructor [~~license~~] course scheduling, reporting, and record retention unless otherwise provided in this section.

(e) Certified first responder instructors must submit all failures of written examinations and proficiency demonstrations to the department on the class completion notification. The notification must indicate whether the failure occurred after the [~~handgun license~~] applicant had been given three opportunities to pass the examinations.

(f) On successful completion of the written examinations or proficiency demonstrations, the qualified handgun instructor[~~,~~] shall certify the applicant has established the applicant's proficiency on the form and in the manner determined by the department.

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

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

TRD-202402615
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES
37 TAC §§15.29, 15.34, 15.38

The Texas Department of Public Safety (the department) proposes amendments to §§15.29, 15.34, and 15.38, concerning Application Requirements--Original, Renewal, Duplicate, Identification Certificates. The proposed amendments implement Senate Bill 1518, 88th Leg., R.S. (2023) and Senate Bill 1527, 88th Leg., R.S. (2023).

The amendments to §15.29 add that any driver license or identification certificate holder who is subject to the requirements of Code of Criminal Procedure, Chapter 65, Terrorist Offender Registration Program, is not eligible to renew or apply for a duplicate driver license or identification certificate by alternative methods.

The amendments to §15.34 add that any driver license or identification certificate holder who is subject to the requirements of Penal Code, Chapter 20A, Trafficking of Persons, or Code of Criminal Procedure, Chapter 65, Terrorist Offender Registration Program, is only eligible to renew 60 days before expiration.

The amendment to §15.38 adds that any driver license or identification certificate holder who is subject to the requirements of Penal Code, Chapter 20A, Trafficking of Persons, or Code of Criminal Procedure, Chapter 65, Terrorist Offender Registration Program, is not eligible to receive a fee exemption as a veteran.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be that those affected driver license and identification certificates holders are not eligible to renew or apply for a duplicate driver license or identification certificate by alternative methods; are only eligible to renew 60 days before expiration; and are not eligible for fee exemptions as a veteran.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new reg-

ulation. The proposed rulemaking does expand, limit, or repeal an existing regulation. The proposed rulemaking does increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rules are in effect, the proposed rules should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov*. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and Texas Code of Criminal Procedure, Article 65.009, which authorizes the department to adopt any rule necessary to implement Chapter 65.

Texas Government Code, §411.004(3); Texas Transportation Code, §§521.005, 522.005, 521.013, 521.272, and 522.003; and Texas Code of Criminal Procedure, Articles 42.016, 62.060, 65.009, and 65.058, are affected by this proposal.

§15.29. Alternative Methods for Driver License Transactions.

(a) Eligible driver license or identification certificate holders may utilize alternative methods to renew or obtain a duplicate of their Texas driver license or identification certificate.

(b) Applicants must apply in the manner provided by the department and pay the applicable fee.

(c) Alternative renewal cannot be used for any two consecutive renewal periods for the purpose of updating the digital images.

(d) Applicants listed in paragraphs (1) - (9) [~~(8)~~] of this subsection are not eligible to renew or apply for a duplicate driver license or identification certificate by alternative methods:

(1) any holder of an occupational license;

(2) any driver license holder who has an administrative or card status that requires review by the department, including, but not limited to, a medical or physical condition that may affect the driver license holder's ability to safely operate a motor vehicle;

(3) any driver license holder applying for renewal that will be 79 years of age or older on the expiration of their current license;

(4) any driver license or identification certificate holder subject to the registration requirements of Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program or Penal Code, Chapter 20A, Trafficking of Persons;

(5) any driver license or identification certificate holder subject to registration requirements of Code of Criminal Procedure, Chapter 65, Terrorist Offender Registration Program;

(6) [~~(5)~~] any driver license or identification certificate holder who is suspended, canceled, revoked, or denied renewal;

(7) [~~(6)~~] any driver license or identification certificate holder who does not have a verified social security number on file with the department;

(8) [~~(7)~~] any driver license or identification certificate holder who does not have a digital image (e.g. photograph or signature) on file with the department; or

(9) [~~(8)~~] any applicant whose lawful presence needs to be verified.

(e) The department may reject an application for an alternative transaction and require the personal appearance of the applicant at a driver license office if it has information concerning the eligibility of the applicant, including, but not limited to, medical and vision conditions.

§15.34. Renewal Period Prior to Expiration.

(a) Any class of driver license or identification card, except those noted in paragraphs (1) - (4) [~~(3)~~] of this subsection, may be renewed 24 months before [~~the~~] expiration [~~date~~].

(1) Provisional licenses may be renewed 60 days before expiration.

(2) Driver licenses or identification cards issued to applicants required to register under Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, or Penal Code, Chapter 20A, Trafficking of Persons, may be renewed 60 days before expiration.

(3) Driver licenses or identification cards issued to applicants required to register under Code of Criminal Procedure, Chapter 65, Terrorist Offender Registration Program, may be renewed 60 days before expiration.

(4) [~~(3)~~] Driver licenses with an expiration date determined by Transportation Code, §521.2711 (person at least 85 years of age) may be renewed 180 days before expiration.

(b) Any applicant for a renewal driver license or identification card must present at least one identity document listed in §15.24 of this title (relating to Identification of Applicants) if the driver license or identification card is not presented.

§15.38. Fee Exemption.

(a) A veteran of service in the armed forces of the United States is eligible for exemption from payment of issuance fees for an original, renewal, examination, or duplicate driver license or personal identification certificate if the veteran meets the following requirements:

(1) was honorably discharged from the armed services of the United States;

(2) has an armed service-related disability of at least 60%; and

(3) receives compensation from the United States because of the armed service-related disability.

(b) Any disabled veteran may waive their fee exemption for a driver license or identification certificate. Application and payment of fee will be considered as such a waiver and no refund of fee will be made.

(c) If not already part of the record, proof of eligibility for the fee exemption must be provided by mail or in-person with the issuance of the driver license or identification certificate.

(d) These provisions do not apply to applicants for a commercial driver license (CDL) or to an applicant subject to the registration requirements of Code of Criminal Procedure, Chapter 62 or Chapter 65, or Penal Code, Chapter 20A.

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

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

TRD-202402616
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

37 TAC §15.42

The Texas Department of Public Safety (the department) proposes amendments to §15.42, concerning Social Security Number. This amendment complies with changes to the Code of Federal Regulations recently passed by the federal government. This amendment reduces the regulatory burden upon driver license and identification certificate applicants by eliminating the need to provide a document to verify Social Security Number, which is verified with the federal government electronically.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of these rules will be the protection of personal information from being in the possession of unauthorized recipients.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on the proposal may be submitted to Kris Krueger, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code.

Texas Government Code, §411.004(3); and Texas Transportation Code §521.005, are affected by this proposal.

§15.42. Social Security Number.

(a) The Social Security number (SSN) shall be obtained from all applicants who have been issued a number by the United States Social Security Administration. This number will be utilized by the department for the purpose of additional identification and may be disclosed only to those entities that have statutory authority to receive the SSN.

(b) When an SSN is originally obtained, the department will verify the authenticity of the SSN through the Social Security Administration. In the event that the SSN cannot be verified, the department may deny the issuance until such time as verification is made through the Social Security Administration. [~~it is mandatory that documentation be provided to verify the number. All documents presented for proof of SSN must be verifiable through the issuing entity and include a pre-printed SSN. Documentation may include:~~]

[~~(1) Federal issued Social Security card,~~]

[~~(2) Military identification (Applies to active, reserve and dependent status),~~]

[~~(3) Certificate of Release or Discharge of Active Duty (DD-214),~~]

[~~(4) Certified college/university transcript designating number as SSN,~~]

[~~(5) IRS form W-2 Wage and Tax Statement,~~]

[~~(6) IRS form 1099-MISC,~~]

[~~(7) Pay stub containing applicant's name and SSN, or~~]

[~~(8) Documents such as health insurance cards, Veteran's Administration cards, and pilot's licenses with identifiable SSN may be accepted.~~]

(c) If a previously issued driver license or identification certificate has not been verified through the Social Security Administration, the department may mail to the address on record a notice requiring the driver license or identification certificate holder to provide additional documentation in order to secure verification through the Social Security Administration. Failure to comply with this request within 30 days may result in the cancellation of the driver license or identification certificate.

(d) [~~(c)~~] On all duplicate and renewal Texas driver license or identification certificate applications, the [~~documented~~] SSN shall be

obtained where it is not currently a part of the applicant's record. If the newly provided SSN cannot be verified, the department may deny the issuance until such time as verification is made through the Social Security Administration. After the SSN becomes a part of the applicant's record, all future duplicate and renewal transactions occurring in a driver license office will be verified by the driver license or identification certificate application [~~verbally for the correct SSN. Should the SSN on record not match the number provided, the applicant will be required to provide acceptable documentation as listed in subsection (b) of this section~~].

[~~(d) The department may verify the authenticity of the SSN on record through the Social Security Administration. In the event that the SSN on record cannot be authenticated, the department may deny issuance of the renewal, duplicate or original transaction until such time as authentication is made through the Social Security Administration. If the license or identification certificate was previously issued, the department may mail to the address on record a notice requiring the license or identification certificate holder to provide additional documentation. Failure to comply with this request within 30 days may result in the cancellation of the driver license or identification certificate.~~]

(e) Applicants who state they have not applied for, have not been issued or do not have an SSN assigned by the Social Security Administration will be given the department's "Social Security" affidavit for completion. This sworn affidavit will contain:

(1) The applicant's full name, date of birth, and driver license or identification certificate number;

(2) A statement that the applicant has not applied for, been issued or assigned an SSN by the United States Social Security Administration;

(3) A statement of release for verification and investigative purposes;

(4) A notice that failure to provide required information to the department may result in the cancellation of the applicant's driver license or identification certificate per Texas Transportation Code, §521.314; and

(5) A notice that the applicant can be subject to other criminal penalties including Texas Transportation Code, §521.451 and §521.454.

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

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

TRD-202402617
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §15.88

The Texas Department of Public Safety (the department) proposes amendments to §15.88, concerning Demand for Surrender of Driver License. The amendment makes conforming changes necessary to implement House Bill 4528, 88th Leg., R.S. (2023), which removed the requirement that a peace officer take physical control of a person's driver's license for failing or refusing an intoxication test because the suspension may now be done electronically. The rule title has also been renamed "Demand for Surrender."

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be that individuals whose license has been suspended, revoked, canceled, disqualified, or denied will retain, for identification purposes only, their driver license or identification card.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §522.005, which authorizes the

department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; Texas Transportation Code, §524.002, which authorizes the department to adopt rules necessary to administer Chapter 524 of the Texas Transportation Code; and Texas Transportation Code, §724.003, which authorizes the department to adopt rules necessary to administer Chapter 724 of the Texas Transportation Code.

Texas Government Code, §411.004(3); Texas Transportation Code, §§521.005, 522.005, 524.002 and 724.003, are affected by this proposal.

§15.88. Demand for Surrender [~~of Driver License~~].

(a) The department may [~~will~~] demand the surrender of a person's driver license or identification card when state law authorizes the surrender. [~~if that license is:~~]

[~~(1) canceled due to a conviction of Texas Transportation Code, §521.451;~~]

[~~(2) revoked due to a determination that the individual is incapable of safely operating a motor vehicle; or~~]

[~~(3) subject to a notice of suspension under Texas Transportation Code, Chapters 524 and 724.~~]

[~~(b) The department will demand the surrender of a person's commercial driver license if that license is suspended, revoked, canceled, disqualified, or issuance of the license has been denied.~~]

[~~(c) This section does not prohibit the department from demanding the surrender of any license when state law authorizes the surrender.~~]

(b) [~~(d)~~] A driver license or identification card that is suspended, revoked, canceled, disqualified, or denied that is not demanded to be surrendered by the department can be held by the individual and used for identification purposes only. Actual possession of the driver license does not provide the individual whose driver license is suspended, revoked, canceled, disqualified, or denied authorization to operate a motor vehicle.

[~~(e) A license that has been surrendered to the department will be returned to the licensee upon termination of the suspension, revocation, cancellation, or denial. The license will not be returned if the license expires during the period it is held by the department.~~]

[~~(f) A license that is surrendered to the department that is damaged or mutilated will not be stored or returned. The licensee will be required to apply for a duplicate license upon termination of the suspension, revocation, cancellation or disqualification.~~]

[~~(g) The department is not responsible for licenses surrendered to another agency or entity. If the license is not forwarded to the department by the other agency or entity the licensee can either apply for a duplicate license upon termination of the suspension, revocation, cancellation or disqualification or contact the other agency or entity in order to locate the surrendered license.~~]

[~~(h) The surrendered license will be mailed to the address supplied to the department during the application, renewal or duplicate process only. If the licensee has moved the licensee will be required to apply for a duplicate license through the change of address process.~~]

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

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

TRD-202402618

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

SUBCHAPTER G. DENIAL OF RENEWAL OF DRIVER LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

37 TAC §15.118

The Texas Department of Public Safety (the department) proposes an amendment to §15.118, concerning Clearance Report. This amendment modifies the reasonable time to submit a clearance report from five days to two days to accurately reflect the current terms and conditions established in the Memorandum of Understanding (MOU) between the department and courts for the Failure to Appear/Failure to Pay Program.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be strict adherence with the current terms and conditions outlined in the MOU.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years

the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; and Texas Transportation Code, §706.012, which authorizes the department to adopt rules to implement Chapter 706 of the Texas Transportation Code.

Texas Government Code, §411.004(3); and Texas Transportation Code, §§521.005, 522.005, 706.005, and 706.012, are affected by this proposal.

§15.118. Clearance Report.

The local political subdivision shall file a clearance report when there is no cause to continue to deny renewal of a person's driver license. In all cases when a clearance report is required, the political subdivision shall notify the department or the department's designee within a reasonable time not to exceed two [~~five~~] business days. The clearance report shall identify the person, state whether or not a fee was required, advise the department to lift the denial of renewal, and state the grounds for the action.

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

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

TRD-202402619
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

CHAPTER 17. ADMINISTRATIVE LICENSE REVOCATION

SUBCHAPTER A. ADMINISTRATIVE LICENSE REVOCATION

37 TAC §§17.1 - 17.4, 17.6, 17.8, 17.11, 17.13, 17.14, 17.16

The Texas Department of Public Safety (the department) proposes amendments to §§17.1 - 17.4, 17.6, 17.8, 17.11, 17.13, 17.14, and 17.16, concerning Administrative License Revocation.

The amendments to §§17.1, 17.2, 17.8, 17.11, 17.13, and 17.16 refine administrative driver license revocation procedures and are necessitated by implementation of the electronic filing and service requirements for the State Office of Administrative Hearings related to the appeal of a driver license suspension. The rule title for §17.16 is also renamed "Service on the Department."

The amendments to §§17.3, 17.4, 17.6, and 17.14 make conforming changes necessary to implement House Bill 4528, 88th Leg., R.S. (2023), which removed the requirement that a peace officer take physical control of a person's driver's license for failing or refusing an intoxication test because the suspension may now be done electronically.

Additional changes made to §§17.2, 17.3, 17.4, and 17.13 implement House Bill 1163, 88th Leg., R.S. (2023), which created a new criminal offense for Boating While Intoxicated with a Child Passenger, by simplifying the language so that any new criminal intoxication offenses created related to a driver license suspension are included.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with these sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period these rules are in effect the public benefit anticipated as a result of these rules will be that individuals are offered a secure, electronic filing option for serving the department in matters related to administrative license revocation and that individuals whose license has been suspended, revoked, canceled, disqualified, or denied will retain, for identification purposes only, their driver license or identification card.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on the proposal may be submitted to Cynthia Allison, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to *DLDrulecomments@dps.texas.gov*. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code; Texas Transportation Code, §524.002, which authorizes the department to adopt rules necessary to administer Chapter 524 of the Texas Transportation Code; and Texas Transportation Code, §724.003, which authorizes the department to adopt rules necessary to administer Chapter 724 of the Texas Transportation Code.

Texas Government Code, §411.004(3); Texas Transportation Code, §§521.005, 522.005, 524.002 and 724.003; and Penal Code §49.061, are affected by this proposal.

§17.1. Scope.

The chapter applies [~~The procedures for notice, hearing, and appeal, as well as the procedures for service of the requests, notifications, copies, certified copies, or tangible/documentary evidence, as the case may be, which are contained in this title apply~~] to suspensions, disqualifications, and denials of driver's licenses arising under the provisions of Administrative License Revocation (ALR), including Texas Transportation Code, Chapters 522, 524, and 724.

§17.2. Definitions.

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

(1) Acquittal--A legal judgment or certification of "not guilty" of a person charged with a crime, including a judgment following directed verdict, in a court proceeding at which jeopardy attached.

(2) Address of record--A person's most recent residence address as shown by the records of the department in accordance with Texas Transportation Code, Chapter 521 or Chapter 522.

(3) Administrative License Revocation (ALR)--Refers to the suspension of a driver's license under Texas Transportation Code, Chapter 524 or Chapter 724, or the disqualification of a person's privilege to drive a commercial motor vehicle under Texas Transportation Code, Chapter 522.

(4) Adult--An individual 21 years of age or older.

(5) Alcohol concentration--Has the meaning contained in Texas Penal Code, §49.01.

(6) Alcohol-related or drug-related enforcement contact--Has the meaning contained in Texas Transportation Code, Chapter 524.

(7) ALR contact--Refers to refusal to submit a breath or blood specimen as provided by Texas Transportation Code, Chapter 724, or refusal to submit a breath, blood or urine specimen as provided by Texas Transportation Code, Chapter 522; or a breath or blood test failure as provided by Texas Transportation Code, Chapter 524, or a breath, blood or urine test failure as provided by Texas Transportation Code, Chapter 522. Also includes the situation where a specimen test is not requested of a minor, as the presence of alcohol was detected by other means.

(8) ALR report--A sworn report of an ALR contact filed by a peace officer and submitted to the department in accordance with Texas Transportation Code, Chapter 524, or a written report of an ALR contact submitted to the department in accordance with Texas Transportation Code, Chapter 724. Also includes a sworn report submitted by a peace officer in accordance with Texas Transportation Code, Chapter 522.

(9) ALR suspension or ALR license suspension--A suspension under Texas Transportation Code, Chapter 524 or Chapter 724.

(10) Arresting officer--Refers to a certified Texas peace officer who arrests a person for any [~~an~~] offense [~~under Texas Penal Code, §49.04, §49.06, §49.07, or §49.08, or Alcoholic Beverage Code, §106.041, or any other offense~~] against the laws of the State of Texas.

(11) Breath alcohol test--Has the meaning assigned in §19.1 of this title (relating to Definitions).

(12) Breath test operator--Refers to the individual who takes a specimen of the person's breath to determine alcohol concentration.

(13) Child--Has the meaning contained in Texas Family Code, §51.02(2).

(14) Commercial driver's license--Has the meaning assigned by Texas Transportation Code, Chapter 522 and Chapter 16 of this title (relating to Commercial Driver's License).

(15) Commercial motor vehicle--has the meaning assigned by Texas Transportation Code, Chapter 522 and Chapter 16 of this title (relating to Commercial Driver's License).

(16) Criminal complaint--Refers to any charging instrument, including, but not limited to, a complaint, an information, an indictment, or a similar sworn document clearly indicating an intent to proceed with criminal prosecution.

(17) Current address--Refers to the address given to an arresting officer by an arrested driver at the time of arrest, as distinguished from the "address of record."

(18) Defendant--Refers to a person who has received notice of ALR license suspension or disqualification and who has timely requested a hearing.

(19) Denial--Refers to the loss of the privilege to obtain a driver's license or permit.

(20) Department--Has the meaning assigned in Texas Transportation Code, Chapter 524.

(21) Director--Has the meaning assigned in Texas Transportation Code, Chapter 524.

(22) Disqualification--Has the meaning assigned in Texas Transportation Code, Chapter 522.

(23) Drive [~~Driver~~]--Has the meaning assigned in Texas Transportation Code, Chapter 522 [~~521~~].

(24) Driver's license, license, or license to operate a motor vehicle--Has the meaning assigned in Texas Transportation Code, Chapter 521. The term also includes a commercial driver's license or a commercial driver learner's permit issued under Texas Transportation Code, Chapter 522.

(25) Failure, or breath, blood or urine test failure--Refers to the analysis of a test specimen of breath or blood which indicates an alcohol concentration specified in Texas Penal Code, §49.01(2)(B), or where a test specimen of breath, blood or urine is provided pursuant to Texas Transportation Code, Chapter 522, and the analysis of

the specimen indicates an alcohol concentration of 0.04 or more. Also includes the analysis of a test specimen provided by a minor that indicates any detectable amount of alcohol as specified in Texas Transportation Code, §524.011(a)(2)(B).

(26) Instrument or breath test instrument--Has the meaning assigned in §19.1 of this title (relating to Definitions).

[~~(27) License or license to operate a motor vehicle--Has the meaning assigned in Texas Transportation Code, Chapter 521. The term also includes a commercial driver's license or a commercial driver learner's permit issued under Texas Transportation Code, Chapter 522.~~]

(27) [~~(28)~~] Maintenance records--Refers to records pertaining to the inspection, maintenance, repair, and upkeep of the breath test instrument on which the driver's alcohol concentration was measured. Maintenance records do not have a regulated format and may be kept in a form as designated by each technical supervisor.

(28) [~~(29)~~] Minor--An individual under 21 years of age.

(29) [~~(30)~~] Nonresident--Has the meaning assigned in Texas Transportation Code, Chapter 521.

(30) [~~(31)~~] Peace Officer--Has the meaning assigned in Texas Penal Code, §1.07(a).

(31) [~~(32)~~] Peace Officer's sworn report or probable cause affidavit--A statement in support of a peace officer's belief that a person committed an offense. This statement shall describe the officer's reasonable suspicion for making contact with a person and/or the probable cause to arrest or detain the person. This statement may additionally include any other grounds known to the officer for believing the person committed the offense. The peace officer's sworn report or probable cause affidavit is normally submitted on Form DIC-23, or an approved alternate form.

(32) [~~(33)~~] Person--Refers to the following: an individual arrested for a violation of an offense listed in Texas Transportation Code, Chapter 524 or Chapter 724 [~~Texas Penal Code, §49.04, §49.06, §49.07, or §49.08~~]; a minor arrested or detained for a violation of Texas Alcoholic Beverage Code, §106.041; or the operator of a commercial motor vehicle who refused to provide a specimen of breath, blood or urine when requested to do so by a peace officer, or who provided a specimen with an alcohol concentration defined in Texas Transportation Code, Chapter 522, whether or not the operator of the commercial motor vehicle was arrested for a violation of an offense listed in Texas Transportation Code, Chapter 524 or Chapter 724 [~~Texas Penal Code, §49.04, §49.07, or §49.08~~].

(33) [~~(34)~~] Public place--Has the meaning assigned in Texas Transportation Code, Chapter 524.

(34) [~~(35)~~] Refusal--Refers to a refusal to submit a specimen under the provisions of Texas Transportation Code, Chapter 522 or Chapter 724.

(35) [~~(36)~~] Revocation of driver's license--Has the meaning assigned in Texas Transportation Code, Chapter 521.

(36) [~~(37)~~] Suspension of driver's license--Has the meaning assigned in Texas Transportation Code, Chapter 521.

(37) [~~(38)~~] Technical supervisor or certified breath test technical supervisor--Refers to the person who is responsible for maintaining and directing the operation of the breath test instrument used to analyze the specimen of the person's breath, and who has been certified by the department under the provisions of §19.4 of this title (relating to Technical Supervisor Certification).

[~~(39) Temporary driving permit--Refers to the authorization to operate a motor vehicle issued pursuant to Texas Transportation Code, §524.011(b)(3) or §724.032(a)(3). The temporary driving permit is incorporated in the notice of suspension (Form DIC-25) and notice of disqualification (Form DIC-57).~~]

(38) [~~(40)~~] Test record or breath alcohol test record--Means the record of a breath alcohol test generated by a breath test instrument.

(39) [~~(41)~~] Watercraft--means powered with an engine having a manufacturer's rating of 50 horsepower or above.

§17.3. Notice of Suspension or Disqualification.

(a) Notice of an ALR suspension or disqualification. Notice of an ALR suspension or disqualification may be served either by a peace officer or by the department.

(b) Notice given by a peace officer.

(1) If a person arrested for an offense listed in Texas Transportation Code, Chapter 524 or Chapter 724 [~~under Texas Penal Code, §49.04, §49.07, or §49.08~~], submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified in Texas Penal Code, §49.01(2)(B), the peace officer shall personally serve notice of driver's license suspension on the arrested driver.

(2) If the person is a minor arrested for an offense under Alcoholic Beverage Code, §106.041, or an offense listed in Texas Transportation Code, Chapter 524 or Chapter 724 [~~under Texas Penal Code, §49.04, §49.07, or §49.08~~], who either submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of a level specified by Texas Transportation Code, §524.011(a)(2)(B), or is not requested to submit to the taking of a specimen, the peace officer shall personally serve notice of driver's license suspension on the minor.

(3) If a person was operating a commercial motor vehicle and submits to the taking of a specimen of breath, blood or urine as provided by Texas Transportation Code, Chapter 522, and an analysis of the specimen shows an alcohol concentration of 0.04 or more, the peace officer shall personally serve notice of disqualification on the person.

(4) Pursuant to paragraphs (1), (2), and (3) of this subsection, if a specimen is taken and the analysis of the specimen is not returned to the peace officer before the person is admitted to bail, released from custody, delivered as provided by Title 3, Family Code, or committed to jail, the arresting officer shall attempt to serve notice of driver's license suspension or disqualification by personally delivering the notice to the person.

(5) If a person arrested for an offense listed in Texas Transportation Code, Chapter 524 or Chapter 724 [~~under Texas Penal Code, §49.04, §49.06, §49.07, §49.08~~], or an offense under Texas Alcoholic Beverage Code, §106.041, or a person requested to submit a breath, blood or urine specimen under Texas Transportation Code, Chapter 522, refuses to give a specimen as designated by the peace officer, the officer shall personally serve notice of driver's license suspension or disqualification on the person.

(c) Notice given by the department. In the event that the arresting officer did not serve notice of suspension or disqualification on the person following an ALR contact, the department shall send, by first class mail, notice of suspension or disqualification to the person's address of record, and to the person's current address given in the ALR report if different. If the department cannot verify that proper notice of suspension was served on the person by a peace officer following an ALR contact, the department may serve notice of suspension or dis-

qualification. Notice is presumed received on the fifth day after the date it is mailed.

(d) Notice given by the department to control. In any case where notice of suspension or disqualification is served by the arresting officer and notice of suspension or disqualification is also sent by the department, notice sent by the department shall be controlling.

§17.4. ALR Reports.

Following an ALR contact, the peace officer shall submit an ALR report to the department on a form approved by the department.

(1) ALR Reports: breath, blood or urine test refusal. This section applies to offenses listed in Texas Transportation Code, Chapters 522, 524, 724, and [~~under Texas Penal Code, §49.04, §49.06, §49.07, §49.08, Texas Transportation Code, Chapter 522, or~~] Texas Alcoholic Beverage Code, 106.041. An ALR report based on a breath, blood or urine test refusal shall contain the following information:

(A) The identity of the person by full legal name, date of birth, and driver's license number, if any;

(B) the peace officer's sworn report or probable cause affidavit (Form DIC-23 and/or Form DIC-54);

(C) a copy of the statutory warning delivered to the person prior to requesting a specimen of breath or blood (Form DIC-24) and/or a copy of the statutory warning for commercial motor vehicle operators delivered to the person prior to requesting a specimen of breath, blood or urine (Form DIC-55);

(D) the person's current address;

(E) documentation of the refusal (Form DIC-24 and/or Form DIC-55), as evidenced by:

(i) a written refusal to give a specimen, signed by the person; or

(ii) a statement signed by the officer stating that the person refused to give a specimen and also refused to sign the statement requested by the officer under Texas Transportation Code, §724.031.

(F) the notice of suspension [~~and temporary driving permit~~] (Form DIC-25) served and/or the notice of disqualification [~~and temporary driving permit~~] (Form DIC-57); and

(G) any other information required by the department [~~on its approved form~~].

(2) ALR Reports: breath, blood or urine test failures. This section applies to offenses listed in Texas Transportation Code, Chapters 522, 524, 724, and [~~under Texas Penal Code, §49.04, §49.07, §49.08, Texas Transportation Code, Chapter 522, or~~] Alcoholic Beverage Code, §106.041. An ALR report based on a breath, blood or urine test failure shall be sworn to by the arresting officer (or by the peace officer requesting the specimen in the case of a commercial motor vehicle operator who is not arrested) and shall contain the following information:

(A) The identity of the person by full legal name, date of birth, and driver's license number, if any;

(B) the peace officer's sworn report or probable cause affidavit (Form DIC-23 and/or Form DIC-54);

(C) a copy of the statutory warning delivered to the person prior to requesting a specimen of breath or blood (Form DIC-24) and/or a copy of the statutory warning for commercial motor vehicle operators delivered to the person prior to requesting a specimen of breath, blood or urine (Form DIC-55);

(D) the person's current address;

(E) a copy of the analysis of the specimen, such as a photocopy of the breath test result; and

(F) the notice of suspension [~~and temporary driving permit~~] (Form DIC-25) served and/or the notice of disqualification [~~and temporary driving permit~~] (Form DIC-57); and

(G) a copy of the criminal complaint, if any, that has been filed with a magistrate or delivered to a local prosecuting attorney with jurisdiction over the offense; and

(H) any other information required by the department [~~on its approved form~~].

(3) ALR Reports: offense under Alcoholic Beverage Code, §106.041, no specimen requested. An ALR report shall contain the following information:

(A) identity of the person by full legal name, date of birth, and driver's license number, if any;

(B) the peace officer's sworn report or probable cause affidavit (Form DIC-23);

(C) the person's current address;

(D) the notice of suspension [~~and temporary driving permit~~] (Form DIC-25) served;

(E) a copy of the criminal complaint, if any, that has been filed with a magistrate or delivered to a local prosecuting attorney with jurisdiction over the offense; and

(F) any other information required by the department [~~on its approved form~~].

(4) Nothing in this section is intended to imply that any specific documents are necessary to be in evidence in a contested hearing for the department to meet its burden. This section applies only to automatic suspensions.

§17.6. Recission.

(a) The department may rescind any ALR suspension or disqualification.

(b) If for any reason the department declines to prosecute an ALR suspension or disqualification, or rescinds said action after imposition, the department shall send notice of rescission to the person at his/her address of record, and current address, if different by first class mail. [~~Under such circumstances, the department may return the person's driver license if it was previously surrendered or confiscated.~~]

(c) A decision by the department to rescind notice of suspension or disqualification has no binding precedential value and the department may later prosecute a suspension or disqualification arising out of the same incident.

§17.8. Hearing Requests.

A person who receives notice of suspension or disqualification may request a hearing as provided.

(1) A hearing request must either be delivered in writing, including by facsimile transmission, email, or through the designated ALR hearing request form on the department's website, or be transmitted by telephone, to the department at its headquarters in Austin at the address or phone number contained in the notice of suspension or disqualification. Hearing requests delivered to any other department address or telephone number will not be honored.

(2) A hearing request must contain sufficient information to enable the department to identify the defendant and to schedule the hearing, which information shall include the following: the defendant's

full legal name, date of birth, driver's license number, the date of arrest, the county of arrest, the name of the law enforcement agency which made the arrest, email address and bar number of defendant's counsel if represented, whether the defendant allegedly failed or refused the specimen test or was not requested to submit a specimen, and such additional nonprivileged information as may be requested by the department.

(3) A hearing request must be timely. In order to be considered timely, a hearing request containing all of the information set forth in paragraph (2) of this section must be received by the department at its headquarters in Austin at the address or phone number contained in the notice of suspension or disqualification not later than 5:00 p.m. on the 15th day after:

(A) the date notice of suspension or disqualification was served by a peace officer; or

(B) the date notice is presumed to have been received, according to the records of the department.

(4) A hearing request which fails to include one or more of the items of information required by paragraph (2) of this section, or one containing incorrect information, will not be deemed to be timely filed. Nothing in this section is intended to prevent a person making a hearing request from supplementing or correcting information contained in a hearing request, provided that such supplementation or correction is received by the department before the deadline for filing a hearing request as set out in paragraph (3) of this section.

(5) The department shall reject any untimely hearing request. When a written hearing request is received and rejected, the department shall mail written notice to the defendant that the hearing request was received and rejected, and state the reason for rejection. When a telephone hearing request is received and rejected, the department shall mail a written notice of the reason for rejection only upon request.

(6) Upon receipt of a timely hearing request, the department shall schedule a hearing and mail written confirmation to the defendant.

(7) A timely hearing request stays the suspension or disqualification pending a final affirmative decision by the administrative law judge.

(8) The department will presume that notice of hearing date, time, and location was received on the fifth day after the day it was mailed.

§17.11. Appeals.

(a) Upon receipt of an appeal petition, the department shall determine whether the defendant is entitled to a 90-day stay of suspension or disqualification pending appeal, in accordance with Texas Transportation Code, Chapter 524. For purposes of determining whether an appeal stays a suspension, the department will consider prior alcohol-related and drug-related enforcement contacts. For purposes of this subsection, alcohol-related and drug-related enforcement contacts occurring both prior to and after the effective date of ALR shall be considered. The date of a prior alcohol-related or drug-related enforcement contact, not the date of the conduct, shall be controlling.

(b) If a stay is granted pending appeal, it shall be effective from the date the petition is filed, not from the date of hearing or decision of the administrative law judge.

(c) A remand pursuant to §524.043(e) does not stay the suspension or disqualification.

(d) To perfect service on the department of a judicial appeal of a final order in a contested ALR case pursuant to 1 TAC §159.255 [~~§159.37~~] (relating to Appeal of Judge's Decision) and this section, a defendant must comply with the service requirements in the court where the appeal is filed. The department's service contact for ALR appeals filed electronically is ALR_Appeals@dps.texas.gov. Appeals not filed electronically may be served by mail to the Texas Department of Public Safety [~~send by certified mail a file-stamped copy of the defendant's appeal petition, certified by the clerk of the court in which the petition is filed, to the department at its headquarters in Austin. The certified copy must be addressed and mailed to~~] Director of Hearings, ALR Program, P.O. Box 15327, Austin, Texas 78761-5327 or by hand delivery or courier receipted delivery through a commercial overnight service during regular business hours to the Texas Department of Public Safety, Director of Hearings, ALR Program, MSC 0380 [~~Driver License Division~~], [~~Department of Public Safety, Main~~] Building A, 5805 North Lamar Boulevard, Austin, Texas 78752-0380 [~~78752-0300~~]. A suspension will not be stayed until service is perfected according to this subsection.

(e) If an affirmative finding by an administrative law judge is reversed on appeal, the appellant shall notify the department by complying with the service requirements in the court where the appeal is filed. The department may be served by the methods outlined in subsection (d) of this section [~~mailing a file-stamped copy of the judgment from the appellate court to the department, addressed to Director of Hearings, ALR Program, Box 15327, Austin, Texas 78761-5327~~]. Upon verification, the department shall remove references of the ALR suspension or disqualification from defendant's driving record if warranted.

§17.13. Effect of Acquittal; Notification to the Department.

(a) Upon notification that a criminal charge of an offense listed in Texas Transportation Code, Chapter 524 or Chapter 724 [~~under Texas Penal Code, §49.04, §49.06, §49.07, §49.08, or Texas Alcoholic Beverage Code, §106.041~~], has resulted in an acquittal, the department shall not impose a suspension arising out of the same conduct or transaction. If a suspension has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the defendant.

(b) To ensure that the department receives notice of acquittal, the defendant shall send a certified copy of the judgment of acquittal to the department at the address contained in the notice of suspension or disqualification [~~listed in §17.16(1) of this title (relating to Service On The Department Of Certain Items Required To Be Served On, Mailed To, Or Filed With The Department)~~]. A defendant should send a written request which identifies the defendant by name and driver's license number, states the date and county of arrest, and requests rescission of the suspension. The department reserves the right to verify the acquittal. Upon verification, the department shall rescind the suspension and remove references to the suspension from the defendant's computerized driving record.

(c) For purposes of this section, the following types of dispositions of any criminal complaint shall not be regarded as an acquittal:

(1) a pre-trial order of dismissal where jeopardy has not attached;

(2) a reduction of charges;

(3) a conviction on a lesser included charge;

(4) a disposition under Texas Penal Code, §12.45; or

(5) any discharge or dismissal brought about by a failure to bring a cause of action to speedy trial within the time required by the state or federal constitutions.

§17.14. Enforcement of Suspensions or Disqualifications.

(a) Knowledge of a license suspension or disqualification is presumed if a peace officer served notice of suspension or disqualification on the person, or if the department mailed notice of suspension or disqualification to the person's address of record and to the person's current address given to the peace officer, if different.

(b) A Texas driver's license, permit, or privilege to operate a motor vehicle may be suspended, denied or disqualified under provisions of ALR. The loss of the privilege to drive in Texas shall apply to unlicensed drivers and nonresidents, as well as residents. The department shall not issue a driver's license to any person who is subject to an order of suspension, denial or disqualification.

[(c) Upon suspension or disqualification of a driver's license, a Texas licensee must surrender any suspended or disqualified license to the department. If a person cannot comply, he must submit an affidavit to the department stating the reason why he cannot produce and surrender the license. Failure or refusal to surrender a license may result in the department initiating criminal proceedings against that licensee, as provided by Texas Transportation Code, Chapter 521. A person may surrender a suspended or disqualified license by either of the following methods:]

[(1) A person may deliver a suspended or disqualified license to an ALR Hearing Attorney employed by the department, any uniformed officer of the department, or any department office during regular business hours.]

[(2) A person may mail a suspended or disqualified license to the Texas Department of Public Safety, Driver Improvement and Control, Box 4040, Austin, Texas 78773-0320.]

[(d) Any department employee who receives a suspended or disqualified license shall send the license to the department's main headquarters in Austin at the address listed in subsection (c)(2) of this section.]

[(e) ALR suspensions shall be enforced as provided by Texas Transportation Code, Chapter 521.]

§17.16. Service on the Department [of Certain Items Required to be Served on, Mailed to, or Filed With the Department].

(a) Where authorized, required, or permitted by statute or rule, a discovery or production request [Request for Production, Maintenance and Repair records, and/or any tangible/documentary evidence required to be] served by the defendant on the department must be served electronically through the electronic filing manager or to the email address listed as the service contact on the case with the electronic filing manager. [on the department by one of the following methods:]

(b) If the defendant is unrepresented, the department may be served by one of the following methods:

(1) by first-class mail, or by certified mail where required, addressed to Texas Department of Public Safety, Director of Hearings, ALR Program, P.O. Box 15327, Austin, Texas 78761-5327;

[(2) by telephonic document transfer (fax) to (512) 424-7171, to the attention of the Director of Hearings, ALR Program;]

(2) [(3)] by hand delivery, during regular business hours, directly to the Texas Department of Public Safety, Director of Hearings, ALR Program, [Driver License Division, Department of Public Safety, Main] Building A, 5805 North Lamar Boulevard, Austin, Texas 78752-0380 [78752-0300].

(3) (4)] by courier receipted delivery through a commercial overnight express delivery service during regular business hours to the Texas Department of Public Safety, Director of Hearings, ALR Program, MSC 0380 [Driver License Division, Department of Public Safety, Main] Building A, 5805 North Lamar Boulevard, Austin, Texas 78752-0380 [78752-0300].

(c) [(b)] This section does not authorize or confer any discovery rights on a person or entity.

(d) [(c)] Any request for the appearance of the "breath test operator and/or breath test technical supervisor" at the ALR hearing, pursuant to Texas Transportation Code, §524.039(a), must be made by one of the methods set forth in subsections (a) and (b) [paragraph (a)] of this section and must be received by the department at least five days prior to the scheduled hearing date.

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

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

TRD-202402620
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848

♦ ♦ ♦

CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§35.5, 35.9, 35.13

The Texas Department of Public Safety (the department) proposes amendments to §§35.5, 35.9, and 35.13, concerning General Provisions. The changes to §35.5, concerning Standards of Conduct, clarify that a company license holder may not use the department's name or insignia in advertisements. The changes to §35.9, concerning Advertisements, exempt publishing the licensee's address in its advertisements when that address is a residence and clarify that business cards constitute advertisements. The changes to §35.13, concerning Drug-Free Workplace Policy, clarify that a sole proprietor must have a drug-free workplace policy.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of these rules will be greater clarity and consistency in the regulation of the private security industry.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "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. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules to guide the department in its administration of Texas Occupations Code, Chapter 1702.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1702.061(a), are affected by this proposal.

§35.5. Standards of Conduct.

(a) The State Seal of Texas, a department seal or insignia, or the department's name or the name of a division within the department, may not be displayed as part of a uniform or identification card, as [~~or~~] markings on a motor vehicle, or in an advertisement or on a website, other than on such items prepared or issued by the department. The department's name may be used for the limited purpose of indicating the person or company is regulated by the department.

(b) All licensees, [~~and~~] company representatives, and employees shall cooperate fully with any investigation conducted by the department, including but not limited to the provision of employee records upon request by the department and compliance with any subpoena issued by the department. Commissioned security officers and personal protection officers shall cooperate fully with any request of the Medical Advisory Board made pursuant to Health and Safety Code, §12.095 relating to its determination of the officer's ability to exercise sound judgment with respect to the proper use and storage of a handgun. Violation of this subsection may result in the suspension of the license or commission for the duration of the noncompliance.

(c) An individual licensee issued a pocket card shall carry the pocket card on or about their person while on duty and shall present same to a peace officer or to a representative of the department upon request.

(d) A company license holder may not require a customer provide any documentation certifying that the customer has received a COVID-19 vaccination, or is in post-transmission recovery, to gain entry to the licensee's premises or to receive regulated services from the license holder.

§35.9. Advertisements.

(a) A licensee's advertisements must include:

(1) The company name and address as it appears in the records of the department unless the address is the license holder's residential address; and

(2) The company's license number.

(b) No licensee shall use the Texas state seal, [~~or~~] the name or insignia of the department, or the name or insignia of a division within the department to advertise or publicize a commercial undertaking, or otherwise violate Texas Business & Commerce Code, §17.08 or Texas Government Code, §411.017. The department's name may be used for the limited purpose of indicating the person or company is regulated by the department.

(c) The use of the department's name is prohibited when it may give a reasonable person the impression that the department issued the statement or that the individual is acting on behalf of the department.

(d) For purposes of this section, an advertisement includes any media created or used for the purpose of promoting the regulated business of the licensee, including business cards.

§35.13. Drug-Free Workplace Policy.

(a) In the interest of creating a safe and drug-free work environment for clients and employees, all licensed companies shall establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy."

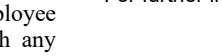
(b) A copy of the company's drug-free workplace policy shall be signed by each employee and kept in each employee's file.

(c) For purposes of subsection (b) of this section, a sole proprietor who performs regulated services on behalf of the company is considered an employee of the company.

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

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

TRD-202402621
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 424-5848



PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.75

The Texas Board of Criminal Justice (board) proposes amendments to §151.75, concerning Standards of Conduct for Finan-

cial Advisors and Service Providers. The proposed amendments add language to specify the disclosure of a relationship or pecuniary interest by a financial advisor or service provider with minor word changes and grammatical updates made for clarity.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §2263.004, which establishes ethics requirements for outside financial advisors or service providers; Chapter 404, which establishes the state treasury operations of the comptroller; Chapter 552, which establishes public information guidelines; and Chapter 2256; which establishes guidelines for public funds investment.

Cross Reference to Statutes: None.

§151.75. Standards of Conduct for Financial Advisors and Service Providers.

(a) Definitions. Financial Advisor or Service Provider is a person or business entity who acts as a financial advisor, financial consultant, money manager, investment manager, or broker.

(b) Applicability.

(1) This section applies in connection with the management or investment of any state funds managed or invested by the Texas Department of Criminal Justice (TDCJ) under the Texas Constitution or other law, including Chapters 404 and 2256, Texas Government Code, without regard to whether the funds are held in the state treasury.

(2) This section applies to financial advisors or service providers who are not employees of the TDCJ, who provide financial services to or advise the TDCJ in connection with the management or investment of state funds, and who:

(A) May reasonably be expected to receive, directly or indirectly, more than $10,000 in compensation from the TDCJ during a fiscal year; or

(B) Render important investment or funds management advice to the TDCJ.

(3) The standards adopted in this section [~~rule~~] are intended to identify professional and ethical standards by which all financial advisors or service providers shall abide in addition to the professional and ethical standards that may already be imposed on financial advisors or service providers under any contracts or service agreements with the TDCJ.

(c) Disclosure Requirements.

(1) A financial advisor or service provider shall disclose in writing to the TDCJ and to the State Auditor:

(A) Any relationship the financial advisor or service provider has with any party to a transaction with the TDCJ, other than a relationship necessary to the investment or fund management services that the financial advisor or service provider performs for the TDCJ, if the relationship could reasonably be expected to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the TDCJ; and

(B) All direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the TDCJ, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the TDCJ in connection with the management or investment of state funds.

(2) The financial advisor or service provider shall disclose a relationship or pecuniary interest described by paragraph (1) of subsection (c) without regard to whether the relationship or pecuniary interest is a direct, indirect, personal, private, commercial, or business relationship.

(3) A financial advisor or service provider shall file an annual [~~annually a~~] statement with the TDCJ and with the State Auditor. The statement shall disclose each relationship and pecuniary interest described by paragraph (1) of subsection (c) or, if no relationship or pecuniary interest described by subsection (c) existed during the disclosure period, the statement shall affirmatively state that fact.

(4) The annual statement shall be filed no later than April 15 on a form prescribed by the TDCJ. The statement shall cover the reporting period of the previous calendar year.

(5) The financial advisor or service provider shall promptly file a new or amended statement with the TDCJ and with the State Auditor whenever there is new information to report under paragraph (1) of subsection (c).

(d) Standards of Conduct.

(1) Compliance.

(A) These standards are intended to be in addition to, and not in lieu of, a financial advisor's or service provider's obligations under its contract or service agreement with the TDCJ. In the event of a conflict between a financial advisor's or service provider's obligations under these standards and under its contract or services agreement, the standard that imposes a stricter ethics or disclosure requirement controls.

(B) A financial advisor or service provider shall be knowledgeable about these standards, keep current with revisions to these standards, and abide by the provisions set forth in these standards.

(C) In all professional activities, a financial advisor or service provider shall perform services in accordance with applicable laws, rules, and regulations of governmental agencies and other applicable authorities, including the TDCJ, and in accordance with any established policies of the TDCJ.

(2) Qualification Standards.

(A) A financial advisor or service provider shall render opinions or advice, or perform professional services only in those areas in which the financial advisor or service provider has competence based on education, training, or experience. In areas where a financial advisor or service provider is not qualified, the financial advisor or service provider shall seek the counsel of qualified individuals or refer the TDCJ to such persons.

(B) A financial advisor or service provider shall keep informed of developments in the field of financial planning and investments and participate in continuing education throughout the financial advisor's or service provider's relationship with the TDCJ [~~in order~~] to improve professional competence in all areas in which the financial advisor or service provider is engaged.

(3) Integrity.

(A) A financial advisor or service provider has an obligation to observe standards of professional conduct when [~~in the course of~~] providing advice, recommendations, and other services performed for the TDCJ. A financial advisor or service provider shall perform professional services with honesty, integrity, skill, and care. During all [~~In the course of~~] professional activities, a financial advisor or service provider shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.

(B) A financial advisor's or service provider's relationship with a third party shall not be used to obtain illegal or improper treatment from such third party on behalf of the TDCJ.

(4) Objectivity. A financial advisor or service provider shall maintain objectivity and be free of conflicts of interest in discharging their responsibilities. A financial advisor or service provider shall remain independent in fact and appearance when providing financial planning and investment advisory services to the TDCJ.

(5) Prudence. A financial advisor or service provider shall exercise reasonable and prudent professional judgment when [~~in~~] providing professional services to the TDCJ.

(6) Competence. A financial advisor or service provider shall discharge their responsibilities to the best of their ability and continually strive to improve their competence and quality of services [~~strive to continually improve their competence and quality of services, and discharge their responsibilities to the best of their ability~~].

(7) Conflicts of Interest.

(A) If a financial advisor or service provider is aware of any significant conflict between the interests of the TDCJ and the interests of another person, the financial advisor or service provider shall advise the TDCJ of the conflict and shall also include appropriate qualifications or disclosures in any related communication.

(B) A financial advisor or service provider shall not perform professional services involving an actual or potential conflict of interest with the TDCJ unless the financial advisor's or service provider's ability to act fairly is unimpaired, there has been full disclosure of the conflict to the TDCJ, and the TDCJ has expressly agreed in writing to the performance of the services by the financial advisor or service provider.

(8) Confidentiality.

(A) A financial advisor or service provider shall not disclose to another person any confidential information obtained from the TDCJ or regarding the TDCJ's investments unless authorized to do so by the TDCJ in writing or required to do so by law.

(B) In this section [~~For the purposes of this subsection~~], "confidential information" refers to information not in the public domain of which the financial advisor or service provider becomes aware while [~~during the course of~~] rendering professional services to the TDCJ. Confidential information [~~It~~] may include information of a proprietary nature, information that is excepted from disclosure under the *Public Information Act,* Chapter 552, Texas Government Code, or information restricted from disclosure under any contract or service agreement with the TDCJ.

(e) Contract Voidable. A contract under which a financial advisor or service provider renders financial services or advice to the TDCJ is voidable by the TDCJ if the financial advisor or service provider violates a standard of conduct outlined in this section [~~rule~~].

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

Filed with the Office of the Secretary of State on June 17, 2024.

TRD-202402651
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: July 28, 2024
For further information, please call: (936) 437-6700

♦ ♦ ♦

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION
SUBCHAPTER D. OTHER RULES

37 TAC §152.61

The Texas Board of Criminal Justice (board) proposes amendments to §152.61, concerning Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails. The proposed amendments revise "rule" to "section" and "offender" to "inmate" throughout and make grammatical updates.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §494.008, which establishes limited law enforcement powers for department employees.

Cross Reference to Statutes: None.

§152.61. Emergency Response to Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails.

(a) Definitions. The following words and terms, when used in this section [~~rule~~], shall have the following meanings unless the context clearly indicates otherwise.

(1) "Assistance" refers to Texas Department of Criminal Justice (TDCJ) resources provided to law enforcement agencies or departments, and non-agent private prisons or jails such as personnel, equipment, vehicles, horses, tracking pack or scent specific canines, and chemical agents.

(2) "Emergency situation" is an event determined by a law enforcement agency that presents an immediate or potential threat to public safety if the TDCJ's assistance is not received. The situation will generally involve multiple inmates [~~offenders~~], an escape, or a hostage situation.

(3) "Law enforcement agency or department" is defined as the Texas Department of Public Safety (DPS), including the Texas Rangers; a municipal police department; a county sheriff's department; a federal law enforcement agency; a university police department; a campus police department; or a school district police department.

(4) "Non-agent private prison or jail" is any privately operated or owned prison or jail in Texas that does not have a contract with the TDCJ to house TDCJ inmates [~~offenders~~].

(5) "TDCJ facility" is any facility operated by or under contract with the TDCJ.

(b) Policy. It is the policy of the TDCJ to assist law enforcement agencies or departments requesting assistance in an emergency situation that presents an immediate or potential threat to public safety, such as apprehending an escapee of a municipal or county jail or a privately operated or federal correctional facility, if the TDCJ determines that providing assistance will not jeopardize the safety and security of the TDCJ and its personnel.

(c) Procedures.

(1) Request for Assistance.

(A) If a non-agent private prison or jail believes that an emergency situation has arisen, it must immediately notify the nearest law enforcement agency to qualify for the TDCJ's assistance. In the case of a non-agent private prison or jail that operates a facility holding county inmates, the facility must first notify the county sheriff to qualify for the TDCJ's assistance.

(B) The law enforcement agency shall then determine whether the situation is indeed an emergency situation as defined in subsection (a)(2) of this section [~~rule~~]. If the situation is determined to be an emergency, the law enforcement agency shall identify the scope of assistance being requested by consulting with the non-agent private prison or jail to determine:

(i) Number and type of personnel needed;

(ii) Number and type of vehicles needed;

(iii) Amount and type of riot equipment needed;

(iv) Number and type of weapons needed, including chemical agents;

(v) Number of tracking pack or scent specific canines needed; and

(vi) Number of horses needed.

(C) After a Texas Ranger, DPS sergeant or higher-ranking officer, county sheriff, or municipal police chief reviews the information gathered in subsection (c)(1)(B) of this section [~~rule~~] and concurs with the scope of assistance required from the TDCJ, law enforcement agency staff may call the nearest TDCJ facility's warden or designee to request assistance. The law enforcement agency shall describe the assistance being requested and agree to have a representative available to take an active role at the site of the emergency situation when the TDCJ team arrives.

(2) Approval.

(A) The TDCJ warden or designee shall contact the appropriate Correctional Institutions Division (CID) regional director for approval to render assistance. The regional director may agree to provide assistance if the assistance will not jeopardize the safety and security of the TDCJ and its personnel.

(B) Once the TDCJ's assistance is approved, the warden or designee shall, in conjunction with the CID regional director, determine what requested resources shall be sent, based on the assessment of the information received as well as concurrent TDCJ needs. The warden or designee shall designate the senior member of the TDCJ emergency assistance team.

(3) Emergency Assistance.

(A) The responding TDCJ facility shall report the request for assistance and the facility's response to the Emergency Action Center (EAC) in accordance with AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents." The warden or designee shall be responsible for all follow-up actions as required by the directive.

(B) Arrival at the Emergency Situation Site.

(i) Upon arrival at the scene of the emergency situation site, the senior member of the TDCJ team shall be briefed by the representative of the law enforcement agency, department, or non-agent private prison or jail required by subsection (c)(1)(C) of this section [~~rule~~].

(ii) The senior member of the TDCJ team shall have sole discretion as to which TDCJ resources shall be deployed.

(C) The senior member of the TDCJ team shall be in charge of the TDCJ resources, to include personnel, at all times.

(D) If the emergency situation requires the use of tracking pack or scent specific canines, the requirements of AD-03.26, "The Use of TDCJ Canines," shall be followed.

(d) Reimbursement for Assistance. The non-agent private prison or jail shall reimburse the TDCJ for all assistance rendered, to include the cost of employees, equipment, and supplies, as well as a minimum of $1,000 for administrative overhead expenses. The TDCJ executive director may waive this requirement.

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

Filed with the Office of the Secretary of State on June 17, 2024.

TRD-202402652
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: July 28, 2024
For further information, please call: (936) 437-6700

♦ ♦ ♦

CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.36

The Texas Board of Criminal Justice (board) proposes amendments to §163.36, concerning Supervision of Offenders with Mental Impairment. The proposed amendments revise the spelling of "judgement" to "judgment."

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *ogccomments@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division; and Texas Health and Safety Code §614.013, which establishes requirements for continuity of care for offenders with mental impairments.

Cross Reference to Statutes: None.

§163.36. Supervision of Offenders with Mental Impairment.

(a) Offender with mental impairment means an offender with an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that either substantially impairs a person's thoughts, perception of reality, emotional process, or judgment [~~judgement~~], or grossly impairs a person's behaviors as demonstrated by recent disturbed behavior.

(b) Community supervision and corrections department directors shall develop and implement policies and procedures for the effective supervision of offenders with mental impairment. Policies and procedures shall address at least the following and any other requirements imposed by special grant conditions:

(1) contact standards;

(2) treatment referral process within and outside of jurisdiction;

(3) coordination of services with treatment providers;

(4) treatment participation requirements;

(5) recommendations for modified conditions of supervision based on an offender's progress, risk factors, or ability to comply;

(6) caseload size; and

(7) violation procedures.

(c) Community supervision officers shall coordinate services with agencies within and outside the criminal justice system to address the needs of the offender with mental impairment.

(d) Departments closing or transferring out of county supervision of an offender with mental impairment shall complete a supervision summary within 14 days and forward the summary and all other pertinent treatment information to the criminal justice agency that assumes supervision of the offender.

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

Filed with the Office of the Secretary of State on June 17, 2024.

TRD-202402653
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: July 28, 2024
For further information, please call: (936) 437-6700

♦ ♦ ♦

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.

TRD-202402624
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 2024
Proposal publication date: March 29, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

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.

TRD-202402627
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 2024
Proposal publication date: March 29, 2024
For further information, please call: (512) 475-3959

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.

TRD-202402629
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 2024
Proposal publication date: February 23, 2024
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.

TRD-202402632
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 4, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

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.

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

TRD-202402597
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

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.

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-202402598
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

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.

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

TRD-202402599
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

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.

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

TRD-202402601
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

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.

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-202402602
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

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.

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

TRD-202402603

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

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.

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

TRD-202402604
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 3, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 936-7322

♦ ♦ ♦

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.

Filed with the Office of the Secretary of State on June 11, 2024.

TRD-202402562
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: July 1, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

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.

Filed with the Office of the Secretary of State on June 11, 2024.

TRD-202402563
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: July 1, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

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.

Filed with the Office of the Secretary of State on June 11, 2024.

TRD-202402561
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: July 1, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 475-4879

♦ ♦ ♦

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.

TRD-202402623
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: July 4, 2024
Proposal publication date: January 26, 2024
For further information, please call: (512) 239-2678

♦ ♦ ♦

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.

TRD-202402642
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

♦ ♦ ♦

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

♦ ♦ ♦

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.

TRD-202402586
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: July 3, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 475-2220

♦ ♦ ♦

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

♦ ♦ ♦

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.

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

TRD-202402607
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

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 352, Medicaid and Children's Health Insurance Program Provider Enrollment

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 352, Medicaid and Children's Health Insurance Program Provider Enrollment, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to mcsrulespubliccomments@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 352" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 1, Part 15, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202402693
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: June 19, 2024

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 103, Injury Prevention and Control

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 103, Injury Prevention and Control, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to injury.web@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 103" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202402600
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: June 13, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 241, Shellfish Sanitation

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 241, Shellfish Sanitation, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to Seafood.Regulatory@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 241" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202402649
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: June 17, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 419, Mental Health Services--Medicaid State Operating Agency Responsibilities

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 419, Mental Health Services--Medicaid State Operating Agency Responsibilities, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to hhsrulescoordinationoffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 419" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.*

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202402650
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: June 17, 2024

♦ ♦ ♦

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 391, Purchase of Goods and Services by the Texas Health and Human Services Commission

Notice of the review of this chapter was published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 423). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 391 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 391. Any amendments, if applicable, to Chapter 391 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 1 TAC Chapter 391 as required by the Texas Government Code §2001.039.

TRD-202402673
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: June 18, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 396, Employee Training and Education

Notice of the review of this chapter was published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 3021). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 396 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 396. Any amendments, if applicable, to Chapter 396 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 1 TAC Chapter 396 as required by the Texas Government Code §2001.039.

TRD-202402585
Jessica Miller
Director, Rules coordination Office
Texas Health and Human Services Commission
Filed: June 13, 2024

♦ ♦ ♦

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) readopts Texas Administrative Code (TAC), Chapter 27, Rules for Administrative Services, under Administrative Procedure Act (APA), Texas Government Code §2001.039, Agency Review of Existing Rules. The notice of intention to review Chapter 27 was published in the *Texas Register* on April 26, 2024 at 49 TexReg 2789.

APA §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001. Such reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission has completed the review of the rules in Chapter 27 pursuant to APA § 2001.039 and finds that the reasons for adopting the rules in Chapter 27 continue to exist. Based on this review and comments received, the commission readopts the chapter with several amendments which will be published in the Adopted Rules section of the *Texas Register.*

The commission has completed the review of Chapter 27 as required by Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in Chapter 27 continue to exist. Therefore, the commission re-adopts Chapter 27, Rules for Administrative Services, in its entirety, under PURA, Texas Utilities Code Annotated §14.002 which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdic-

tion and Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

Cross reference to Statutes: PURA §14.002 and Texas Gov't. Code §2001.039.

TRD-202402594
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2024

♦ ♦ ♦

Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 96, Bloodborne Pathogen Control

Notice of the review of this chapter was published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2204). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 96 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 96 except for:

§96.302, Device Registration;

§96.303, Registration Procedures; and

§96.304, Registration Fees.

The identified repeals and any amendments, if applicable, to Chapter 96 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 96 as required by the Texas Government Code §2001.039.

TRD-202402654
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: June 17, 2024

♦ ♦ ♦

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 8, Peer Assistance Programs for Impaired Professionals

Notice of the review of this chapter was published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2323). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 8 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 8. Any amendments, if applicable, to Chapter 8 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 8 as required by the Texas Government Code §2001.039.

TRD-202402595
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: June 13, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 355, Epilepsy Program

Notice of the review of this chapter was published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2551). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 355 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 355. Any amendments, if applicable, to Chapter 355 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 355 as required by the Texas Government Code §2001.039.

TRD-202402646
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: June 17, 2024

♦ ♦ ♦

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 749, Minimum Standards for Child-Placing Agencies

Notice of the review of this chapter was published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2790). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 749 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 749. Any amendments, if applicable, to Chapter 749 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 749 as required by the Texas Government Code §2001.039.

TRD-202402694

Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: June 19, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 86, Special Provisions for Contested Case Hearings, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the November 24, 2023, issue of the *Texas Register* (48 TexReg 6922).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 86 are required because Chapter 86, Subchapter A indicates that the chapter supplements 30 TAC Chapter 80 (Contested Case Hearings) by providing specific procedures for particular types of hearings. In the event of conflicting provisions, Chapter 86 prevails over Chapter 80.

Chapter 86, Subchapter B provides procedures for the water rights adjudications that were conducted by TCEQ and predecessor agencies under Texas Water Code (TWC), Chapter 11 starting in 1977. Although TCEQ has completed all adjudications for the state, there are still some pending claims in court.

Chapter 86, Subchapter D provides procedures for petitions by affected persons to TCEQ claiming that a city's rulings, orders, or other acts relating to water pollution control and abatement outside the corporate limits of such city and adopted under TWC, §26.177, or any statutory authorization, are invalid, arbitrary, unreasonable, inefficient, or ineffective in the city's attempt to control water quality. This action is specifically allowed under TWC, §26.177(d). Because TWC, §26.177(d) still exists, Chapter 86, Subchapter D is still needed.

Public Comment

The public comment period closed on December 28, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 86 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202402622
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 14, 2024

♦ ♦ ♦

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (board) has completed the review of §151.77, Purchasing and Contracting with Historically Underutilized Businesses; §155.21, Naming of a Texas Department of Criminal Justice Owned Facility; §163.3, Objectives; §163.5, Waiver to Standards; §163.25, Strategic Plan; and §195.71, Drug and Alcohol Testing Program, in accordance with Texas Government Code §2001.039. Notice of the rule review was published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2551). No comments were received regarding the rule review.

An assessment was made by the board who determined the reasons for initially adopting the rules continue to exist and readopts the rules without changes. This concludes the board's review of §§151.77, 155.21, 163.3, 163.5, 163.25, and 195.71.

TRD-202402655
Stephanie Greger
General Counsel
Texas Department of Criminal Justice
Filed: June 17, 2024

♦ ♦ ♦

Texas Workforce Investment Council

Title 40, Part 22

The Texas Workforce Investment Council (Council) has completed the rule review of Title 40, Texas Administrative Code (TAC), Part 22, Chapter 901, Designation and Redesignation of Local Workforce Development Areas; Rule §901.1, Procedures for Considering Redesignation of Workforce Development Areas; and Rule §901.2, Appeal of Decision on Designation or Redesignation (40 TAC §901.1 and §901.2). The review was conducted in accordance with Texas Government Code §2001.039.

Notice of the review 40 TAC §901.1 and §901.2 was published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1290). No public comments were received in response to that notice. The Council considered whether the reasons for initially adopting the rules continue to exist.

In reviewing the rules, the Council determined that the reasons for initially adopting the rules continue to exist, the rules are not obsolete, and the rules reflect the current procedures of the Council. No changes are proposed to the rules as a result of the review. The Council readopts 40 TAC §901.1 and §901.2 without changes in accordance with Texas Government Code §2001.039.

40 TAC §901.1 and §901.2 are readopted under the authority of Texas Government Code, §2308.101(a)(3), which requires the Council to recommend to the Governor the designation and redesignation of local workforce development areas and §2308.103(a)(1), which authorizes the Council to adopt rules.

This concludes the review of 40 TAC §901.1 and §901.2.

TRD-202402647
Kaki Leyens
Executive Director
Texas Workforce Investment Council
Filed: June 17, 2024

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §151.1001(b)(4)

Passing Standards for Secondary English Language Arts and Social Studies Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
231	English Language Arts and Reading 7-12 Texas Examinations of Educator Standards (TExES)	125	72
331	English Language Arts and Reading 7-12 TExES (Selected-Response Portion) – through 9/1/25 English Language Arts and Reading 7-12 TExES (Constructed-Response Portion) – through 9/1/25	72 8	37 4
331	English Language Arts and Reading 7-12 TExES (Selected-Response Portion) – beginning 9/2/25 English Language Arts and Reading 7-12 TExES (Constructed-Response Portion) – beginning 9/2/25	72 8	41 5
232	Social Studies 7-12 TExES	120	83
233	History 7-12 TExES	80	48

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(7)

Passing Standards for Health and Physical Education Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score*)
157	Health EC-12 Texas Examinations of Educator Standards (TExES)	80	51
257	Health EC-12 TExES (Selected-Response Portion) – through 9/1/25	72	37
	Health EC-12 TExES (Constructed-Response Portion) – through 9/1/25	8	4
257	Health EC-12 TExES (Selected-Response Portion) – beginning 9/2/25	72	41
	Health EC-12 TExES (Constructed-Response Portion) – beginning 9/2/25	8	5
158	Physical Education EC-12 TExES	80	50
258	Physical Education EC-12 TExES (Selected-Response Portion) – through 9/1/25	72	49
	Physical Education EC-12 7-12 TExES (Constructed-Response Portion) – through 9/1/25	8	3
258	Physical Education EC-12 7-12 TExES (Selected-Response Portion) – beginning 9/2/25	72	53
	Physical Education EC-12 TExES (Constructed-Response Portion) – beginning 9/2/25	8	4

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

Figure: 19 TAC §151.1001(b)(14)

Passing Standards for Pedagogy and Professional Responsibilities Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score* or Minimum Standard)
160	Pedagogy and Professional Responsibilities EC-12 Texas Examinations of Educator Standards (TExES)	90	60
~~270~~	~~Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES~~	~~80~~	~~49~~
370	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (Selected-Response Portion) – prior to 5/3/2022	72	24
	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (Constructed-Response Portion) – prior to 5/3/2022	NA	Complete***
370	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (Selected-Response Portion) – after 5/3/2022 through 5/2/23	72	38
	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (Constructed-Response Portion) – after 5/3/2022 through 5/2/23	8	4
370	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (Selected-Response Portion) – after 5/2/2023	72	42
	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (Constructed-Response Portion) – after 5/2/2023	8	5
370			
2001	edTPA: Elementary Literacy	NA	Complete**
2002	edTPA: Elementary Mathematics	NA	Complete**
2003	edTPA: Secondary English-Language Arts	NA	Complete**
2004	edTPA: Secondary History/Social Studies	NA	Complete**
2005	edTPA: Secondary Mathematics	NA	Complete**
2006	edTPA: Secondary Science	NA	Complete**
2011	edTPA: Physical Education	NA	Complete**
2012	edTPA: Special Education	NA	Complete**
2014	edTPA: Early Childhood Education	NA	Complete**
2015	edTPA: Visual Arts	NA	Complete**
2016	edTPA: Middle Childhood Mathematics	NA	Complete**

2017	edTPA: Middle Childhood Science	NA	Complete**
2018	edTPA: Middle Childhood English-Language Arts	NA	Complete**
2019	edTPA: Middle Childhood History/Social Studies	NA	Complete**
2020	edTPA: World Language	NA	Complete**
2021	edTPA: K-12 Performing Arts	NA	Complete**
2100	edTPA: Agricultural Education	NA	Complete**
2102	edTPA: Business Education	NA	Complete**
2104	edTPA: Classical Languages	NA	Complete**
2108	edTPA: Educational Technology Specialist	NA	Complete**
2110	edTPA: Elementary Education-Literacy with Math Test 4	NA	Complete**
2117	edTPA: Family and Consumer Sciences	NA	Complete**
2119	edTPA: Health Education	NA	Complete**
2143	edTPA: Technology and Engineering Education	NA	Complete**
2149	edTPA: Elementary Education-Mathematics with Literacy Task 4	NA	Complete**
2151	edTPA: Career and Technical Education	NA	Complete**

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

**Complete is defined as a scorable portfolio, which includes receiving no more than one condition code per task.

***Complete is defined as a full and complete scorable response that must address the specific requirements of the item, be of sufficient length to respond to the requirements of the item, be original work and written in the candidate's own words (however, candidates may use citations when appropriate), and conform to the standards of written English.

Figure: 30 TAC §336.357(z)

Category 1 and Category 2 Threshold				
Radioactive Material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81.0

Note: Calculations Concerning Multiple Sources or Multiple Radionuclides

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or

exceeds the threshold and is thus subject to the requirements of this section.

I. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

R_1 = total activity for radionuclide 1 R_2 = total activity for radionuclide 2 R_N = total activity for radionuclide n AR_1 = activity threshold for radionuclide 1 AR_2 = activity threshold for radionuclide 2 AR_N = activity threshold for radionuclide n

$$\left[\sum_{i}^{n} \left[\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \frac{R_n}{AR_n} \right] \geq 1.0 \right]$$

$$\frac{R_1}{AR_1} + \frac{R_2}{AR_2} + \cdots + \frac{R_n}{AR_n} \geq 1.0$$

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Correction of Error

The Texas Health and Human Services Commission (HHSC) published the administrative transfer for the former Department of Aging and Disability Services rules in Texas Administrative Code, Title 40, Part 1, Chapter 47 in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4436). The administrative transfer was published with the incorrect chapter title, "Contracting to Provide Primary Home Care." The correct title of the chapter is "Primary Home Care, Community Attendant Services, and Family Care Programs" which will be transferred to Texas Administrative Code, Title 26, Part 1, Chapter 277, Primary Home Care, Community Attendant Services, and Family Care Programs, effective July 1, 2024.

TRD-202402681

♦ ♦ ♦

Coastal Bend Workforce Development Board

Correction of Error

The Coastal Bend Workforce Development Board published "Request for Applications for Professional Development Trainers to Provide Training to Child Care Providers (RFA 24-01)" in the June 21, 2024, issue of the *Texas Register* (49 TexReg 4611). Due to an error by the Texas Register, this submission was published with the incorrect Texas Register Docket Number (TRD).

The correct TRD number for this submission is TRD-202402553.

TRD-202402657

♦ ♦ ♦

Request for Statement of Qualifications for Legal Services (RFQ 24-02)

Workforce Solutions Coastal Bend is soliciting proposals from qualified entities or individuals to provide professional legal services. Proposers must: be legally authorized to provide legal services in the State of Texas, have a minimum of five (5) years of experience in working with non-profit, governmental, and quasi-governmental organizations, have a working knowledge and understanding of state and federal rules and regulations as they apply to government funded programs, and have the necessary technical competence, skills and professional judgement to accomplish the work solicited in the RFQ.

The initial contract will be awarded for a period of one year beginning on October 1, 2024, and ending on September 30, 2025. The contract may be renewed for three (3) additional one-year periods beyond the original acceptance award for a total not to exceed four (4) years.

The RFQ will be available on Monday, June 24, 2024 at 2:00 p.m. Central Time and can be accessed on our website at: https://www.workforcesolutionscb.org/about-us/procurement-opportunities/ or by contacting Esther Velazquez at (361) 885-3013 or esther.velazquez@workforcesolutionscb.org.

Proposals are due by Monday, July 22, 2024 at 4:00 p.m. Central Time and may be submitted via email to esther.velazquez@workforcesolutionscb.org or hand delivered or mailed to: Workforce Solutions Coastal Bend, 400 Mann Street, Suite 800, Corpus Christi, Texas 78401.

Workforce Solutions Coastal Bend is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 1-800-735-2989 (TDD) and 1-800-735-2988 or 711 (Voice). Historically Underutilized Businesses (HUBs) are encouraged to apply.

Este documento contiene información importante sobre los requisitos, los derechos, las determinaciones y las responsabilidades del acceso a los servicios del sistema de la fuerza laboral. Hay disponibles servicios de idioma, incluida la interpretación y la traducción de documentos, sin ningún costo y a solicitud.

TRD-202402666
Alba Silvas
Chief Operating Officer
Coastal Bend Workforce Development Board
Filed: June 18, 2024

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.009, and §304.003 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/24/24 - 06/30/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/24/24 - 06/30/24 is 18.00% for commercial[2] credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 07/01/24 - 07/31/24 is 8.50%.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202402688
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 19, 2024

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from RelyOn Credit Union (Kaufman) seeking approval to merge with Neighborhood Credit Union (Dallas), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all the information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202402697
Michael S. Riepen
Commissioner
Credit Union Department
Filed: June 19, 2024

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Cabot Community Credit Union, Pampa, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, businesses and other legal entities located in Carson County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all the information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202402696
Michael S. Riepen
Commissioner
Credit Union Department
Filed: June 19, 2024

♦ ♦ ♦

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Field of Membership - Approved

Community Service Credit Union (Huntsville) - See *Texas Register* dated March 1, 2024.

Telco Plus Credit Union #1 (Longview) - See *Texas Register* dated April 26, 2024.

Telco Plus Credit Union #2 (Longview) - See *Texas Register* dated April 26, 2024.

Telco Plus Credit Union #3 (Longview) - See *Texas Register* dated April 26, 2024.

Articles of Incorporation - Approved

An application was received from PosTel Family Credit Union (Wichita Falls) to amend its Articles of Incorporation relating to Place of Business. - See *Texas Register* dated May 24, 2024.

An application was received from Hockley County School Employees Credit Union (Levelland) to amend its Articles of Incorporation relating to name change. See *Texas Register* dated May 24, 2024.

TRD-202402687
Michael S. Riepen
Commissioner
Credit Union Department
Filed: June 19, 2024

♦ ♦ ♦

Deep East Texas Council of Governments

Request for Proposals Broadband Network Operator

The Deep East Texas Council of Governments (DETCOG) has recently received a CDBG Disaster Mitigation Grant from the Texas General Land Office for installation of a wireless and fiber broadband network serving Northern Newton County. Accordingly, DETCOG is seeking to contract with a qualified broadband network operator to operate and maintain the network infrastructure and provide all retail internet and related services to subscribers on the network.

The complete Request for Proposals can be viewed online at www.detcog.gov/rfps-rfqs. Copies can also be obtained by contacting DETCOG by email at respond@detcog.gov. Proposals must be received no later than July 10, 2024 at 4:00 p.m. CST. Proposals must be submitted to:

RFP 2024-02 - Broadband Network Operator

Deep East Texas Council of Governments

1405 Kurth Drive

Lufkin, Texas 75904

DETCOG reserves the right to negotiate with any and all individuals or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. DETCOG is an Affirmative Action/Equal Opportunity Employer.

TRD-202402675
Lacy Sargent
Executive Assistant/HR Coordinator
Deep East Texas Council of Governments
Filed: June 18, 2024

♦ ♦ ♦

Request for Proposals Economic Development Grants Specialist

The Deep East Texas Council of Governments (DETCOG) is seeking a qualified and experienced individual or entity to perform contract services as Regional Economic Development Grants Specialist ("Grants Specialist"). The Grants Specialist will provide grant services for DETCOG in the Texas Counties of Angelina, Houston, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler. A more detailed description of the desired deliverables is provided in Request for Proposals (RFP) No. 2024-01.

The complete Request for Proposals can be viewed online at www.detcog.gov/rfps-rfqs. Copies can also be obtained by contacting DETCOG by email at respond@detcog.gov. Proposals must be

received no later than July 9, 2024 at 1:00 p.m. CDT. Proposals must be submitted to:

RFP 2024-02 - Grants Specialist

Deep East Texas Council of Governments

1405 Kurth Drive

Lufkin, Texas 75904

DETCOG reserves the right to negotiate with any and all individuals or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. DETCOG is an Affirmative Action/Equal Opportunity Employer.

TRD-202402674
Lacy Sargent
Executive Assistant/HR Coordinator
Deep East Texas Council of Governments
Filed: June 18, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 30, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 30, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2023-1606-PWS-E; IDENTIFIER: RN103871331; LOCATION: Woodcreek, Hays County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(4), by failing to have all backflow prevention assemblies tested upon installation and on an annual basis by a recognized backflow assembly tester and certified that they are operating within specifications; PENALTY: $4,623; ENFORCEMENT COORDINATOR: Rachel Vulk, (512) 239-6730; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: ARANSAS MART LLC dba Stanley's Ice Station 9; DOCKET NUMBER: 2023-0022-PST-E; IDENTIFIER: RN102268802; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(9)(iii) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 day; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Attoyac Rock, LLC; DOCKET NUMBER: 2022-0789-WQ-E; IDENTIFIER: RN105726723; LOCATION: San Augustine, San Augustine County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and Texas Pollutant Elimination System Multi-Sector General Permit Number TXR05EX94, Part III, Section A.4(f), by failing to implement spill prevention and response measures to prevent spills and to provide adequate spill response; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: Benrus Grocery LLC dba Star Quik Stop; DOCKET NUMBER: 2023-1104-PST-E; IDENTIFIER: RN110949591; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1) and (2)(B) and (A)(i) and (iii)(III), and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST and associated pressurized piping installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring, and failing to test the line leak detector for performance and operational reliability at least once per year; PENALTY: $7,052; ENFORCEMENT COORDINATOR: Adriana Fuentes, (956) 430-6057; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Black Branch Terminals LLC; DOCKET NUMBER: 2023-1123-PST-E; IDENTIFIER: RN101628485; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: out-of-service facility; RULES VIOLATED: 30 TAC §334.49(a)(1) and (c)(2)(C), and (4)(C) and §334.54(b)(3) and TWC, §26.3475(d), by failing to provide adequate corrosion protection for the temporarily-out-of-service underground storage tank system, also, failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure the rectifier and other system components are operating properly, and additionally, failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $3,979; ENFORCEMENT COORDINATOR: Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Blue Cube Operations LLC; DOCKET NUMBER: 2024-0416-AIR-E; IDENTIFIER: RN108772245; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 93978, Special Conditions Number 1, Federal Operating Permit Number O2204, General Terms and Conditions and Special Terms and Conditions Number 15, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $50,000;

ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: Chrisco Asphalt, LLC; DOCKET NUMBER: 2022-1127-MLM-E; IDENTIFIER: RN110370285; LOCATION: Center Point, Kerr County; TYPE OF FACILITY: asphalt plant; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and 30 TAC §334.123(a)(1) and §334.127(a)(1) and TWC, §26.346(a), by failing to register all aboveground storage tanks in existence on or after September 1, 1989, with the TCEQ; PENALTY: $8,125; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: City of Boyd; DOCKET NUMBER: 2023-1610-PWS-E; IDENTIFIER: RN101387496; LOCATION: Boyd, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; and 30 TAC §290.118(a) and (b), by failing to meet the maximum secondary constituent levels for total dissolved solids of 1,000 milligrams per liter (mg/L) and chloride of 300 mg/L; PENALTY: $575; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: City of Eden; DOCKET NUMBER: 2022-0599-PWS-E; IDENTIFIER: RN101405439; LOCATION: Eden, Concho County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exist, or after any material improvements, corrections, or additions to the private water distribution facilities; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition and free of excessive solids; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving the wells are in a non-deteriorated condition; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; PENALTY: $6,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,500; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: City of Idalou; DOCKET NUMBER: 2023-1416-PWS-E; IDENTIFIER: RN101406825; LOCATION: Idalou, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; PENALTY: $1,725; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: CM FUELING, LLC dba Carpenter Fueling CM Key Lock Station; DOCKET NUMBER: 2023-0123-PST-E; IDENTIFIER: RN102018843; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: retail gas station; RULES VIOLATED: 30 TAC §334.50(b)(2)(B) and TWC, 26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: $2,556; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2023-1048-MWD-E; IDENTIFIER: RN103145603; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014376001, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $14,025; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: EQUISTAR CHEMICALS, LP; DOCKET NUMBER: 2021-0088-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(B), 116.115(c), 116.615(2), and 122.143(4), New Source Review (NSR) Permit Numbers 4477, 18978, PSDTX752M5, and N162, Special Conditions (SC) Number 1, Standard Permit Registration Number 159535, Federal Operating Permit (FOP) Numbers O1606 and O2223, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 15 and 18, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1606, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §101.201(b)(1)(J) and §122.143(4), FOP Number O1606, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; 30 TAC §101.201(c) and §122.143(4), FOP Number O2223, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; 30 TAC §§115.722(c)(1), 116.115(c), 116.615(2), and 122.143(4), NSR Permit Number 4477, SC Number 1, Standard Permit Registration Number 159535, FOP Number O1606, GTC and STC Numbers 1.A. and 15, and THSC, §382.085(b), by failing to prevent unauthorized emissions and failing to limit highly reactive volatile organic compounds emissions to 1,200 lbs or less per one-hour block period; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Numbers 114809 and N190, SC Number 1 (effective March 26, 2019), NSR Permit Numbers 114809 and N190M1, SC Number 1 (effective November 6, 2020), FOP Number O1606 GTC and STC Number 15 (voided August 4, 2020), FOP Number O2223, GTC and STC Number 20 (issued August 5, 2020), and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: $541,954; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $269,488; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: ETEX Fiber Supply LLC; DOCKET NUMBER: 2022-0242-AIR-E; IDENTIFIER: RN106891682; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: wood drying plant; RULES VIOLATED: 30 TAC §101.20(1) and §116.115(c), 40 Code of Federal Regulations §60.8(a), New Source Review (NSR) Permit Number 129432, Special Conditions (SC) Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct a

performance test no later than 180 days after initial startup; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §116.115(b)(2)(E), NSR Permit Number 129432, General Conditions Number 7 and SC Number 27, and THSC, §382.085(b), by failing to maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance; PENALTY: $4,830; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: HOLIGAN COMMUNITIES, INCORPORATED; DOCKET NUMBER: 2023-1530-WQ-E; IDENTIFIER: RN111346870; LOCATION: Rockport, Aransas County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit Number TXR1553GT, Part III, Section F.2(a)(ii), by failing to properly select, install, and maintain control measures according to the manufacturer's or designer's specifications; and 30 TAC §281.25(a)(4) and TPDES Construction General Permit Number TXR1553GT, Part III, Sections F.8(a), D.1, and B.2(c) and (e)., by failing to provide a copy of the Stormwater Pollution Prevention Plan to the Executive Director upon request; PENALTY: $975; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: James Grady Lebow; DOCKET NUMBER: 2023-0336-WOC-E; IDENTIFIER: RN111623195; LOCATION: San Saba, San Saba County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §30.5(a) and §30.381(b), TWC, §37.003, and Texas Health and Safety Code, §341.034(b), by failing to have a current, valid water system operator's license prior to performing process control duties in production or distribution of public drinking water; PENALTY: $2,445; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(17) COMPANY: JAMES LAKE MIDSTREAM LLC; DOCKET NUMBER: 2023-1038-AIR-E; IDENTIFIER: RN107088759; LOCATION: Goldsmith, Ector County; TYPE OF FACILITY: oil and gas processing plant; RULES VIOLATED: 30 TAC §§116.115(c), 116.615(2), and 122.143(4), Standard Permit Registration Number 116553, Federal Operating Permit Number O3771/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(2) and (9)(E)(ii), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $40,000; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Krishna ABRR Incorporated dba A-1 Mart; DOCKET NUMBER: 2023-0394-PST-E; IDENTIFIER: RN102010097; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $6,628; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Lower Colorado River Authority; DOCKET NUMBER: 2024-0285-AIR-E; IDENTIFIER: RN105377352; LOCATION: Winchester, Fayette County; TYPE OF FACILITY: turbines as peaking units and auxiliary systems; RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Standard Permit Registration Number 83475, Federal Operating Permit Number O3026, General Terms and Conditions and Special Terms and Conditions Number 7, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: LyondellBasell Acetyls, LLC; DOCKET NUMBER: 2021-1478-AIR-E; IDENTIFIER: RN100224450; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 4751, Special Conditions Number 6, Federal Operating Permit Number O1375, General Terms and Conditions and Special Terms and Conditions Number 19, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $41,700; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $16,680; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: MARINA QUEST, INCORPORATED dba Texoma Marina and Resort; DOCKET NUMBER: 2023-0242-PWS-E; IDENTIFIER: RN102071990; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; PENALTY: $65; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Pecan Park Bulverde LLC; DOCKET NUMBER: 2023-1501-EAQ-E; IDENTIFIER: RN111661146; LOCATION: Bulverde, Comal County; TYPE OF FACILITY: business office complex; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Program plan prior to commencing regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $1,625; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(23) COMPANY: Prihoda Gravel Company, LLC; DOCKET NUMBER: 2022-0316-WQ-E; IDENTIFIER: RN108757519; LOCATION: Altair, Colorado County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $14,875; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Rickey Repka dba Repkas Grocery and Barbara Repka dba Repkas Grocery; DOCKET NUMBER: 2022-1709-PWS-E; IDENTIFIER: RN101211670; LOCATION: Pattinson, Waller County; TYPE OF FACILITY: public water supply; RULES

VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: $811; ENFORCEMENT COORDINATOR: Ilia Perez-Ramirez, (713) 767-3743; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Rusty Jason Miller dba In Loving Memory Pet Cremations; DOCKET NUMBER: 2022-0313-MLM-E; IDENTIFIER: RN111270369; LOCATION: Tuscola, Taylor County; TYPE OF FACILITY: pet crematory; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and 30 TAC §330.7(a), by failing to obtain a permit or other authorization prior to conducting storage, processing, or disposal of municipal solid waste; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: SI Group, Incorporated; DOCKET NUMBER: 2022-0018-AIR-E; IDENTIFIER: RN100218999; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O1431, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; 30 TAC §116.115(c) and §122.143(4), New Source Review (NSR) Permit Number 2341, Special Conditions (SC) Number 1, FOP Number O1431, GTC and STC Number 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 2341, SC Number 16, FOP Number O1431, GTC and STC Number 10, and THSC, §382.085(b), by failing to sample, analyze, and record the total organic compounds and concentrations in parts per million by weight of phenol, methanol, toluene, cresol, dimethylphenol, and trimethylphenol of the waste water in the Wastewater Surge Tank F-1001 daily; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 2341, SC Number 19, FOP Number O1431, GTC and STC Number 10, and THSC, §382.085(b), by failing to conduct weekly visible emissions observations; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1431, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $45,680; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: T&L Fort Worth, LLC dba Servpro Lake Arlington; DOCKET NUMBER: 2023-1697-IHW-E; IDENTIFIER: RN111831780; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: commercial and residential warehouse and unauthorized industrial and hazardous waste (IHW) storage site; RULES VIOLATED: 30 TAC §335.2(a) and (b) and §335.4, by failing to have or obtain authorization to dispose of IHW at an authorized facility; and 30 TAC §335.504 and 40 Code of Federal Regulations §262.11, by failing to conduct hazardous waste determinations and waste classifications; PENALTY: $11,813; ENFORCEMENT COORDINATOR: Tiffany Chu, (817) 588-5891; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2023-0949-PWS-E; IDENTIFIER: RN101197176; LOCATION: Water Valley, Coke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $11,200; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $11,200; ENFORCEMENT COORDINATOR: Margaux Ordoveza, (512) 239-1128; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(29) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2024-0326-PST-E; IDENTIFIER: RN106439227; LOCATION: Kermit, Winkler County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.48(d), (h)(1)(A)(i) and (ii), and §334.51(a)(6) and TWC, §26.3475(c)(1) and (2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition and inspected and serviced in accordance with the manufacturer's specifications, and failing to conduct a walkthrough inspection of the spill prevention and release detection equipment at least once every 30 days; and 30 TAC §334.48(c) and §334.50(b)(1)(A) and (d)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases in a manner which will detect a release at a frequency of at least once every 30 days, and failing to conduct effective manual or automatic inventory control procedures for the UST system; PENALTY: $5,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,000; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Westlake Longview Corporation; DOCKET NUMBER: 2023-0550-AIR-E; IDENTIFIER: RN105138721; LOCATION: Longview, Harrison County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 19959, Special Conditions Number 1, Federal Operating Permit Number O1967, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202402643
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 17, 2024

♦ ♦ ♦

Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for an Air Quality Permit Proposed Permit Number 174951

APPLICATION AND PRELIMINARY DECISION. Nueces Green Ammonia LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 174951, which would authorize construction of the Nueces Green Ammonia Plant located near southwest corner of Farm-to-Market Road 1889 and Farm-to-Market Road 46, north of Robstown, Nueces County, Texas 78380. **AVISO DE IDIOMA ALTERNATIVO.** El aviso de idioma alternativo en espanol está disponible en https://www.tceq.texas.gov/permitting/air/newsourcereview/air-permits-pendingpermit-apps. This application was submitted to the

TCEQ on December 26, 2023. The proposed facility will emit the following contaminants: anhydrous ammonia, carbon monoxide, hazardous air pollutants, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi regional office, and at the Keach Family Library, 1000 Terry Shamsie Boulevard, Robstown, Nueces County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will hold a public meeting on this application because it was requested by local legislators. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, July 29, 2024 at 7:00 p.m.

Richard M. Borchard Regional Fairgrounds

Conference Center - Grand Ballroom A

1213 Terry Shamsie Boulevard

Robstown, Texas 78380

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

You may submit additional written public comments within 30 days of the date of newspaper publication of this notice in the manner set forth in the AGENCY CONTACTS AND INFORMATION paragraph below, or by the date of the public meeting, whichever is later. After the deadline for public comment, the executive director will consider the comments and prepare a response to all public comment. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A person who may be affected by emissions of air contaminants from the facility is entitled to request a hearing. A contested case hearing request must include the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" (4) a specific description of how you would be adversely affected by the application and air emissions from the facility in a way not common to the general public; (5) the location and distance of your property relative to the facility; (6) a description of how you use the property which may be impacted by the facility; and (7) a list of all disputed issues of fact that you submit during the comment period. If the request is made by a group or association, one or more members who have standing to request a hearing must be identified by name and physical address. The interests the group or association seeks to protect must also be identified. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing within 30 days following this notice to the Office of the Chief Clerk, at the address provided in the information section below.

A contested case hearing will only be granted based on disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decisions on the application. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. Issues that are not submitted in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. A timely hearing request has been received by the TCEQ. However, if all timely contested case hearing requests have been withdrawn and no additional comments are received, the executive director may issue final approval of the application. The response to comments, along with the executive director's decision on the application will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the Commissioners' Integrated Database (CID). If all timely hearing requests are not withdrawn, the executive director will not issue final approval of the permit and will forward the application and requests to the Commissioners for their consideration at a scheduled commission meeting.

INFORMATION AVAILABLE ONLINE. When they become available, the executive director's response to comments and the final decision on this application will be accessible through the Commission's website at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application which is provided at the top of this notice. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.668628,27.829485&level=13.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/, or in writing to the Texas

Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Nueces Green Ammonia LLC, 8 The Green, Suite A, Dover, Delaware 19901-3618 or by calling Ms. Elizabeth Stanko, Director of ESG Advisory Services at (713) 244-1039.

Notice Issuance Date: June 14, 2024

TRD-202402679
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 18, 2024

♦ ♦ ♦

Enforcement Orders

An agreed order was adopted regarding City of Tom Bean, Docket No. 2021-1546-MWD-E on June 18, 2024 assessing $4,200 in administrative penalties with $840 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jerry Lee Vincent, Docket No. 2021-1572-MSW-E on June 18, 2024 assessing $6,250 in administrative penalties with $5,050 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding William Euceda dba BNA Quick Stop, Docket No. 2021-1593-PST-E on June 18, 2024 assessing $3,874 in administrative penalties with $774 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RJIN CORPORATION, Docket No. 2022-0184-AIR-E on June 18, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Craig Schneider, Docket No. 2022-0214-LII-E on June 18, 2024 assessing $943 in administrative penalties with $188 deferred. Information concerning any aspect of this order may be obtained by contacting Arti Patel, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shamsuddin N. Khoja dba Chavez Food Mart, Docket No. 2022-0255-PST-E on June 18, 2024 assessing $5,969 in administrative penalties with $1,193 deferred. Information concerning any aspect of this order may be obtained by contacting Amy Lane, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Voyles, LLC, Docket No. 2022-0627-PWS-E on June 18, 2024 assessing $3,100 in administrative penalties with $620 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aaron Davis Construction, LLC, Docket No. 2022-0922-WQ-E on June 18, 2024 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Verdun Oil & Gas LLC, Solaris Oilfield Site Services Operating, LLC, and Universal Pressure Pumping, Inc., Docket No. 2022-0972-IHW-E on June 18, 2024 assessing $5,206 in administrative penalties with $1,041 deferred. Information concerning any aspect of this order may be obtained by contacting Eresha DeSilva, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SJK PETROLEUM INC dba Joe's Fast Lane, Docket No. 2022-1020-PST-E on June 18, 2024 assessing $3,118 in administrative penalties with $623 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fermin Venegas, Docket No. 2022-1145-PST-E on June 18, 2024 assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Solu Enterprises Inc. dba Texaco A & K Mart, Docket No. 2022-1147-PST-E on June 18, 2024 assessing $4,375 in administrative penalties with $875 deferred. Information concerning any aspect of this order may be obtained by contacting Eresha DeSilva, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EAST HOUSTON UTILITIES, INC., Docket No. 2022-1197-PWS-E on June 18, 2024 assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Christiana McCrimmon, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kali Investments LLC dba Valley Ridge Beverage, Docket No. 2022-1251-PST-E on June 18, 2024 assessing $3,000 in administrative penalties with $600 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Fishbeck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town of Holiday Lakes, Docket No. 2022-1291-PWS-E on June 18, 2024 assessing $275 in administrative penalties with $55 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pilot Thomas Logistics LLC, Docket No. 2022-1304-PST-E on June 18, 2024 assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Runnin Red LLC dba Runnin Red Food Store, Docket No. 2022-1305-PST-E on June 18, 2024 assessing $7,033 in administrative penalties with $1,406 deferred. Information concerning any aspect of this order may be obtained by contacting Celicia Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Topsey Water Supply Corporation, Docket No. 2022-1548-PWS-E on June 18, 2024 assessing $1,500 in administrative penalties with $300 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JACKSON ELECTRIC COOPERATIVE, INC, Docket No. 2022-1574-PWS-E on June 18, 2024 assessing $550 in administrative penalties with $110 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Palo Duro Service Company, Inc., Docket No. 2022-1620-PWS-E on June 18, 2024 assessing $312 in administrative penalties with $62 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ville d'Alsace Water Supply, LLC, Docket No. 2022-1662-PWS-E on June 18, 2024 assessing $695 in administrative penalties with $139 deferred. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas, LLC, Docket No. 2022-1667-PWS-E on June 18, 2024 assessing $2,250 in administrative penalties with $2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez Scott, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kaura Energy Inc dba On the Road 154, Docket No. 2023-0018-PST-E on June 18, 2024 assessing $5,650 in administrative penalties with $1,130 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 2AMA INC dba Lucky Corner Store, Docket No. 2023-0023-PST-E on June 18, 2024 assessing $4,288 in administrative penalties with $857 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southwest Milam Water Supply Corporation, Docket No. 2023-0092-PWS-E on June 18, 2024 assessing $1,350 in administrative penalties with $270 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2023-0158-PWS-E on June 18, 2024 assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Nicholas Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SANVI ENTERPRISES, INC. dba Chilly Mart Drive-In, Docket No. 2023-0204-PST-E on June 18, 2024 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BONITA-TWO CORPORATION dba Corner Stop, Docket No. 2023-0235-PST-E on June 18, 2024 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Celicia Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Astoria Homes, LLC, Docket No. 2023-0282-WQ-E on June 18, 2024 assessing $5,000 in administrative penalties with $1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jones's River Bend Property Owners Association, Live Oak County, Inc, Docket No. 2023-0356-PWS-E on June 18, 2024 assessing $2,250 in administrative penalties with $450 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas

An agreed order was adopted regarding Texas Department of Transportation, Docket No. 2023-0383-PST-E on June 18, 2024 assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oklaunion Industrial Park, LLC, Docket No. 2023-0595-AIR-E on June 18, 2024 assessing $3,250 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Willie J. Moore, Docket No. 2023-0778-WQ-E on June 18, 2024 assessing $4,200 in administrative penalties with $840 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement

Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G. E. HUEBNER CONCRETE INC., Docket No. 2023-1193-WQ-E on June 18, 2024 assessing $2,125 in administrative penalties with $425 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Georgetown Independent School District, Docket No. 2023-1549-EAQ-E on June 18, 2024 assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HASS ENTERPRISES, INC. dba Pay N Save, Docket No. 2023-1699-PST-E on June 18, 2024 assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Lauren Little, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Two Guns Aggregate, LLC, Docket No. 2023-1711-WQ-E on June 18, 2024 assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equinix LLC, Docket No. 2024-0043-AIR-E on June 18, 2024 assessing $3,250 in administrative penalties with $650 deferred. Information concerning any aspect of this order may be obtained by contacting Krystina Sepulveda, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding West Cedar Creek Municipal Utility District, Docket No. 2024-0329-MWD-E on June 18, 2024 assessing $7,125 in administrative penalties with $1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Cranford, Blake Aaron, Docket No. 2024-0339-WOC-E on June 18, 2024 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Sifuentes, Edilberto, Docket No. 2024-0588-OSI-E on June 18, 2024 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Nancy Sims, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Shawn Patrick Mckenzie, Docket No. 2024-0664-WOC-E on June 18, 2024 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Epi Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202402695
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 19, 2024

♦ ♦ ♦

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 176204

APPLICATION. Chisholm Trail Redi-Mix LLC, 3340 Peden Road, Fort Worth, Texas 76179-5565 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 176204 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 3340 Peden Road, Fort Worth, Tarrant County, Texas 76179. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.434378,32.938994&level=13. This application was submitted to the TCEQ on April 26, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on May 23, 2024.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Wednesday, July 17, 2024, at 6:00 p.m.

Residence Inn Fort Worth Alliance

13400 North Freeway

Fort Worth, Texas 76177

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment pe-

riod closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Drive, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Chisholm Trail Redi-Mix, LLC, 3340 Peden Rd, Fort Worth, Texas 76179-5565, or by calling Mr. Aaron Hertz at (512) 709-4251.

Notice Issuance Date: June 11, 2024

TRD-202402690
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 19, 2024

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 30, 2024.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 30, 2024.** The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Groesbeck; DOCKET NUMBER: 2021-0973-MWD-E; TCEQ ID NUMBER: RN101918944; LOCATION: approximately one mile northeast of the intersection of State Highway 14 and State Highway 164 on the north side of Farm-to-Market Road 1245, Limestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010182001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $28,687; STAFF ATTORNEY: Taylor Pack Ellis, Litigation, MC 175, (512) 239-6860; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Laura Smith; DOCKET NUMBER: 2021-0764-MLM-E; TCEQ ID NUMBER: RN110730223; LOCATION: 926 Stevens Ranch Road, Bandera, Bandera County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) and industrial hazardous waste (IHW) site; RULES VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and 30 TAC §335.4, by causing, suffering, allowing, or permitting the unauthorized disposal of IHW; PENALTY: $41,250; Financial Inability to Pay reduction of $40,050; STAFF ATTORNEY: Casey Kurnath, Litigation, MC 175, (512) 239-5932; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202402663
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 18, 2024

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 30, 2024.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO

should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 30, 2024.** The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Bruce Reyes; DOCKET NUMBER: 2022-0958-PST-E; TCEQ ID NUMBER: RN101767846; LOCATION: 5121 Farm-to-Market Road 226, Woden, Nacogdoches County; TYPE OF FACILITY: temporarily out-of-service underground storage tank (UST) system and a convenience store; RULES VIOLATED: 30 TAC §37.815(a) and (b) and §334.54(e)(5), by failing to provide financial assurance or conduct a site check and perform any necessary corrective actions for a temporarily out-of-service UST system in order to meet financial assurance exemption requirements; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A) and §334.54(c)(1), by failing to monitor a temporarily out-of-service UST system for releases; TWC, §26.3475(d) and 30 TAC §334.49(e), by failing to provide adequate corrosion protection for the UST system; 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, B, and C - for the facility; and 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of occurrence of the change or addition; PENALTY: $7,500; STAFF ATTORNEY: Taylor Pack Ellis, Litigation, MC 175, (512) 239-6860; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: EMROOZ, Inc. dba Snappy Foods 23; DOCKET NUMBER: 2020-0395-PST-E; TCEQ ID NUMBER: RN102225679; LOCATION: 5626 Leopard Street, Corpus Christi, Nueces County; TYPE OF FACILITY: underground storage tank (UST) and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(B) and (2)(A)(iii), by failing to monitor the UST and piping, which were installed after January 1, 2009, for releases at a frequency of at least once every 30 days using interstitial monitoring; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detector at least once per year for performance and operational reliability; PENALTY: $2,918; STAFF ATTORNEY: David Keagle, Litigation, MC 175, (512) 239-3923; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(3) COMPANY: Zuri Business LLC dba A-Z Food Mart; DOCKET NUMBER: 2021-1155-PST-E; TCEQ ID NUMBER: RN102348562; LOCATION: 11369 United States Highway 69 North, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(B), by failing to monitor the UST installed on or after January 1, 2009, in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test the line leak detector at least once per year for performance and operational reliability; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(iii), by failing to monitor each pressurized pipe installed on or after January 1, 2009, for releases at a frequency of at least once every 30 days by using interstitial monitoring; 30 TAC §334.605(d), by failing to retain the certified Class A and B Operator by January 1, 2020, regardless of the three-year re-training requirement, with a course submitted and approved by TCEQ; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: $6,613; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202402664
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 18, 2024

♦ ♦ ♦

Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill Proposed Permit No. 62054

Application. StoneHawk Capital Partners, LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62054). The proposed development concerns a tract of land of approximately 7.30 acres located at 11450 Trinity Boulevard, Euless, Texas in Tarrant County. The proposed development includes four multi-family residential buildings with a total footprint of 203,526 square feet and associated driveways, parking areas, and support utilities. The development permit application is available for viewing and copying at the Euless Public Library at 201 North Ector Drive, Euless in Tarrant County. The application, including updates, is available electronically at the following webpage: www.tceq.texas.gov/goto/wasteapps. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/0y4H11. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at http://www14.tceq.texas.gov/epic/eComment/ or in writing to the

Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. *Si desea información en español, puede llamar al (800) 687-4040.*

Further information may also be obtained from Mr. Brandon Hopkins at the mailing address 4550 Travis Street, Suite 565, Dallas, Texas 75205 or by calling Mr. Sam Enis, P.G. at (512) 574-1199.

Issued Date: June 14, 2024

TRD-202402689
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 19, 2024

♦ ♦ ♦

Notice of Public Hearing on NRC Compatibility and Error Correction, 30 TAC Chapter 336

The Texas Commission on Environmental Quality (TCEQ) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 336, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would modify the rules to correct errors, remove obsolete text, add clarity, add a definition of "closure" to Subchapter B of 30 TAC Chapter 336, Radioactive Substance Fees, and modify the training requirements for the Radiation Safety Officer in 30 TAC §336.208(a) and 30 TAC §336.1215(a)(5) to provide the commission flexibility in determining adequate training for the Radiation Safety Officer at different licensed facilities.

TCEQ will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on July 29, 2024, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by July 25, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on July 26, 2024, to those who register for the hearing.

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

https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTU0NzNjMzMtMGI5YS00NGFmLWI4ODktZmIyZDRmODQyMmIw%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a-40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://tceq.commentinput.com/.* File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2024-010-336-WS. The comment period closes July 30, 2024. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Hans Weger, Radioactive Materials Division, (512) 239-6465

TRD-202402636
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 14, 2024

♦ ♦ ♦

Notice of Public Hearing on Proposed Revisions to 30 Texas Administrative Code Chapter 114 and to the State Implementation Plan for the Texas Vehicle Inspection and Maintenance Program

The Texas Commission on Environmental Quality (commission) will offer a public hearing to receive testimony regarding proposed air quality rules and a state implementation plan (SIP) revision resulting from the passage of two bills by the 88th Texas Legislature that impact the Texas vehicle inspection and maintenance (I/M) program: House Bill (HB) 3297, which eliminates the mandatory annual vehicle safety inspection program for noncommercial vehicles and Senate Bill (SB) 2102, which extends the initial registration and inspection period for rental vehicles from two years to three years. The hearing is required by Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the U.S. Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking concerns amendments to 30 Texas Administrative Code (TAC) Chapter 114, Control of Air Pollution from Motor Vehicles, to implement provisions of HB 3297 and SB 2102 and clean-up amendments to remove outdated program-related definitions, references, and requirements (**Project No. 2024-013-114-AI**). The proposed SIP revision would incorporate I/M program amendments from the associated proposed rulemaking (**Project No. 2024-014-SIP-NR**).

The commission will offer a virtual public hearing on these proposals on July 24, 2024, at 7:00 p.m. CDT. The virtual hearing is structured for the receipt of oral comments only. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposals 30 minutes prior to the hearing. The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing must register by July 17, 2024. To register for the hearing, please email

SIPRules@tceq.texas.gov and provide the following information: your name, your affiliation, your e-mail address, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on July 22, 2024, to those who registered for the hearing.

The hearing will be conducted in English, and Spanish language interpretation services will be made available. Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Sandy Wong, General Law Division at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Stephanie Frederick, MC 206, Office of Air, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to either (512) 239-4804 or *fax4808@tceq.texas.gov.* Electronic comments may be submitted via the TCEQ Public Comment system at: *https://tceq.commentinput.com/*. File size restrictions may apply. All comments should reference the respective project number.

The comment period closes at 11:59 p.m. CDT on July 29, 2024. Information concerning the proposed rules, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/rules/propose_adopt.html. Information concerning the proposed SIP revisions, including proposal documents and instructions for providing public comment, is available at https://www.tceq.texas.gov/airquality/sip/san/san-latest-ozone. For further information, contact the project manager for the proposed project. For **Project No. 2024-013-114-AI** contact David Serrins at (512) 239-1954. For **Project No. 2024-014-SIP-NR**, contact Stephanie Frederick at (512) 239-1001.

TRD-202402582
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 13, 2024

♦ ♦ ♦

Notice of Request for Public Comment and Notice of a Public Meeting on Proposed Non-Rule Air Quality Standard Permit for Natural Gas Electric Generating Units

The Texas Commission on Environmental Quality (commission) is providing an opportunity for public comment and will conduct a public meeting to receive testimony regarding the proposed issuance of a new non-rule air quality standard permit for natural gas fired electric generating units (EGUs) under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195, Standard Permit; 30 Texas Administrative Code Chapter 116, Subchapter F, Standard Permits; and Texas Government Code, Chapter 2001, Subchapter B.

The proposed standard permit would provide a preconstruction authorization that may be used by any natural gas fired EGU complying with the standard permit requirements provided the natural gas EGU is not prohibited by other local, state, or federal permitting statutes or regulations. The proposed standard permit would provide applicants with more flexibility when seeking authorization of natural gas EGUs at a site and serves as an alternative option to the existing Non-Rule Air Quality Standard Permit for EGUs. The standard permit would only be applicable to spark-ignited internal combustion engines that fire natural gas and excludes boilers and turbines. It would include operating specifications and emission limitations for typical natural gas engines during routine operation and planned maintenance, startup, and shutdown.

The commission will hold a hybrid virtual and in-person public meeting on this proposal in Austin on Tuesday, July 30, 2024, at 10:00 a.m. in Building F, room 2210, at the commission's central office located at 12100 Park 35 Circle. The meeting is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the meeting; however, commission staff members will be available to discuss the proposal 30 minutes prior to the meeting.

Individuals who plan to attend the meeting virtually and want to provide oral comments and/or want their attendance on record must register by Friday, July 26, 2024. To register for the meeting, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the meeting. Instructions for participating in the meeting will be sent on July 29, 2024, to those who register for the meeting.

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

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmUwYzJmZTgtNjhiNi00ODA3LWJhZDItYjcwZDY1Yzg0ZTU0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

If you need translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, Post Office Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/*. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2024-005-OTH-NR. The comment period closes midnight on July 30, 2024. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Ms. Suzanne Alexander, Operational Support Section, Air Permits Division, (512) 239-2134.

TRD-202402692
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 19, 2024

♦ ♦ ♦

Notice of Water Quality Application

The following notice was issued on June 13, 2024:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS PUBLISHED IN THE *TEXAS REGISTER.*

INFORMATION SECTION

NRG Texas Power LLC, which operates T.H. Wharton Electric Generating Station, a steam electric generating facility, has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0001039000 to authorize the locations of the monitoring points in internal Outfall 301 to a single location after the tricellerator. The draft permit authorizes the discharge of cooling tower blowdown, stormwater, flush water, and previously monitored effluents (low volume wastewater on an intermittent and flow-variable basis via Outfall 101, metal cleaning waste on an intermittent and flow-variable basis via Outfall 201, low volume wastewater, stormwater, and spill prevention and control countermeasures sources on an intermittent and flow-variable basis via Outfall 301, and treated domestic wastewater on a flow-variable basis via Outfall 401) at a daily average dry-weather flow not to exceed 3.95 MGD and a daily maximum dry-weather flow not to exceed 6.87 MGD via Outfall 001. The facility is located at 16301 Tomball Parkway, in the City of Houston, Harris County, Texas 77064.

TRD-202402676
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 18, 2024

♦ ♦ ♦

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 3, 2024, to June 7, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 14, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday July 14, 2024.

Federal License and Permit Activities:

Applicant: City of Port Lavaca

Location: The project site is located in Lavaca Bay, at East U.S. Highway 87 and South Commerce Street at Bayfront Peninsula Park, in Port Lavaca, Calhoun County, Texas.

Latitude and Longitude: 28.6173, -96.618754

Project Description: The applicant proposes to construct living shoreline protection consisting of a rock breakwater, a reef breakwater and two marsh creation islands with a total of 7.7 acres of permanent fill related impacts below the high tide line (HTL). The rock breakwater is proposed to be 2,120-foot-long by 70-foot-wide to 91-foot-wide at the ends resulting in the discharge of 33,500 cubic yards (CY) into 3.51 acres, which will be comprised of stone material and will be located along the southern portion of the project area. The reef breakwater is proposed to be 950-foot-long by 30-foot-wide, resulting in 4,000 CY into 0.63 acre, which will be comprised of concrete oyster reef breakwater units and located along the northern portion of the project area. The reef is being proposed as compensatory mitigation to offset potential oyster bed loss, as well as to offer protection for the proposed marsh islands.

The proposed marsh islands would be approximately 1.55 acres and 2.01 acres and situated along the western shoreline of Bayfront Peninsula Park. The marsh creation islands would be created utilizing approximately 10,000 CY of beneficial use dredge material (BUDM), sourced from nearby upland borrow areas owned by the applicant. The marsh creation islands will be contoured, graded, and planted with native vegetation species to provide additional habitat benefits to the project and aid in stabilization of newly placed material and shoreline. The BUDM will be transported via truck using street access routes and proposed temporary vehicle access routes.

Temporary impacts include dredging approximately 6,300 CY within a temporary access channel (1.84 acres). The dredge material will be temporarily placed into a 1.17-acre area below HTL within the temporary placement area boundaries, in association with the creation of a temporary dredge material placement area. This material will be returned to its original source location once the project features have been constructed. Additional temporary impacts are proposed to 0.19 acre of estuarine emergent wetlands from temporary vehicle access roads.

The applicant is also proposing to relocate 0.47 acre of oyster reef to the southern edge of the impacted reef and will be coordinated with TPWD through an aquatic resource relocation plan (ARRP).

The applicant proposed to mitigate for the proposed impacts by relocating an existing 0.47-acre oyster reef as well as the creation of a 0.63-acre oyster reef breakwater. The applicant is not proposing any further mitigation.

Type of Application: U.S. Army Corps of Engineers permit application # SWG- 2024-00114. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1265-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202402576
Mark Havens
Chief Clerk
General Land Office
Filed: June 12, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation-Lamar Bridge Area, Aransas County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated July 21, 2023, delineating the mean higher high-water line of the east shoreline of Aransas Bay, State Tract 84, adjacent to the William Lewis Survey, Abstract 96, in Aransas County, Texas in connection with TGLO CMP No.23-020-013-D607. Centroid coordinates N 28.135224°, W -97.007935° (N 28° 08' 07", W 96° 00' 29"), WGS84. A copy of the survey has been filed in Volume 8, Pages 83 & 84, File No. 403388 of the Aransas County Map Records, Aransas County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/5/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Aransas County, Sketch No. 22.

TRD-202402587
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation- Magnolia Beach Area, Calhoun County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated July 25, 2023, delineating the mean higher high-water line of the south shoreline of Lavaca Bay, State Tract 33, adjacent to the Jose Maria Mancha Survey, Abstract 236, in Calhoun County, Texas in connection with TGLO CMP No. 23-020-013-D607. Centroid coordinates 28.561184°, -96.539677° WGS84. A copy of the survey has been filed in Instrument: 2024-00433, Slide 717A & 717B, Official Records of Calhoun County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/5/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Calhoun County, Sketch No. 14.

TRD-202402588
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation-Rasberry Island Area, Calhoun County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated August 4, 2023, delineating the mean higher high-water line of the north shoreline of Espiritu Santo Bay, State Tract 242, adjacent to the Santiago Gonzales Survey, Abstract 19, in Calhoun County, Texas in connection with TGLO CMP No.23-020-013-D607. Centroid coordinates N 28.433480°, W 96.409907° WGS84. A copy of the survey has been filed in Instrument: 2024-00434, Slide 718A & 718B, Official Records of Calhoun County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/5/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Calhoun County, Sketch No. 13.

TRD-202402589
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation-Keller Bay Area, Calhoun County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated July 24, 2023, delineating the mean higher high-water line of the north shoreline of Keller Bay, State Tract 77, adjacent to the William Arnold Survey, Abstract 2, in Calhoun County, Texas in connection with TGLO CMP No.23-020-013-D607. Centroid coordinates N 28.6374510°, W 96.453671° WGS84. A copy of the survey has been filed in Instrument: 2024-00435, Slide 719A & 719B, Official Records of Calhoun County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/5/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Calhoun County, Sketch No. 12.

TRD-202402590
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Anchor QEA - Aransas National Wildlife Refuge-GIWW

Project No: CEPRA 1727

Project Manager: Kevin Frenzel, P.G. CEPRA Program Manager

Surveyor: Jim Naismith, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated May 2 - 25, 2023, delineating the littoral boundary of portions of The Gulf Intracoastal Waterway and The Aransas National Wildlife Refuge, and being situated in Submerged Land Tracts 2, 9A, 10, 12, 11, 21, & 23 and the A.B. Pedigo Survey, Abstract 336, the Aransas CSL Survey, Abstract 230, the Leopold Cahn Survey, Abstract 325, the John Kelly Heirs Survey, Abstract 95, and the Aransas CSL Survey, Abstract 9 in Aransas and Calhoun Counties, in connection with CEPRA No. 1727. Centroid coordinates 28.180171°, -96.864877°, WGS84. A copy of the survey has been filed in Instrument: 403985, Volume 8, Page 88 & 89, Aransas County Plat Records.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/6/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Aransas County, Sketch No. 21.

TRD-202402591
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation- Palacios Harbor Area, Matagorda County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated July 19, 2023, delineating the mean higher high-water line of the north shoreline of Tres Palacios Bay, State Tracts 40 & 50, adjacent to the D. Collinsworth Survey, Abstract 129, in Matagorda County, Texas in connection with TGLO CMP No. 23-020-013-D607. Centroid coordinates 28.695408°, -96.233500° WGS84. A copy of the survey has been filed in Instrument: 2024-6, Slide 673B, Matagorda County Map Records, Matagorda County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/6/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Matagorda County, Sketch No. 17.

TRD-202402592
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation- Hog Island Area, Matagorda County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated August 23, 2023, delineating the mean higher high-water line of the west shoreline of East Matagorda Bay, State Tract 130, adjacent to the Samuel Love Survey, Abstract 59, in Matagorda County, Texas in connection with TGLO CMP No. 23-020-013-D607. Centroid coordinates 28.651472°, -95.876764° WGS84. A copy of the survey has been filed in Instrument: 2024-8, Slide 674B, Matagorda County Map Records, Matagorda County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/6/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/12/24

Filed as: Tex. Nat. Res. Code §33.136 - Matagorda County, Sketch No. 19.

TRD-202402593
Mark Havens
Chief Clerk
General Land Office
Filed: June 13, 2024

♦ ♦ ♦

Surveying Services Coastal Boundary Survey

Project: Matagorda Bay Foundation - Oyster Lake Area, Matagorda County.

Project No: TGLO CMP No.23-020-013-D607

Project Manager: Jessica Chappell, TGLO Coastal Management Program

Surveyor: Kim Thomas Doyle, Licensed State Land Surveyor

Description: Coastal Boundary Survey dated July 19, 2023, delineating the mean higher high-water line of the south shoreline of Matagorda Bay, State Tract 315, adjacent to the Isaac E. Robertson Survey, Abstract 85, in Matagorda County, Texas in connection with TGLO CMP No. 23-020-013-D607. Centroid coordinates 28.611660°, -96.214876° WGS84. A copy of the survey has been filed in Instrument: 2024-7, Slide 674A, Matagorda County Map Records, Matagorda County, Texas.

A Coastal Boundary Survey for the above-referenced project has been reviewed and accepted by Surveying Services; upon completion of public notice requirements, the survey will be filed in the Texas General Land Office, Archives and Records, in accordance with provisions of the Tex. Nat. Res. Code §33.136.

by:

Signed: David Klotz, Staff Surveyor

Surveying Services Date: 6/6/24

Pursuant to Tex. Nat. Res. Code §33.136, the herein described Coastal Boundary Survey is approved by Dawn Buckingham, M.D., Commissioner of the Texas General Land Office.

by:

Signed: Mark Havens, Chief Clerk

Date: 6/13/24

Filed as: Tex. Nat. Res. Code §33.136 - Matagorda County, Sketch No. 18.

TRD-202402648
Mark Havens
Chief Clerk
General Land Office
Filed: June 17, 2024

♦ ♦ ♦

Texas Health and Human Services Commission

Correction of Error

The Texas Health and Human Services Commission (HHSC) published the administrative transfer for the former Department of Aging and Disability Services rules in Texas Administrative Code, Title 40, Part 1, Chapter 47 in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4436). The administrative transfer was published with the incorrect chapter title, "Contracting to Provide Primary Home Care." The correct title of the chapter is "Primary Home Care, Community Attendant Services, and Family Care Programs" which will be transferred to Texas Administrative Code, Title 26, Part 1, Chapter 277, Primary Home Care, Community Attendant Services, and Family Care Programs, effective July 1, 2024.

TRD-202402682

♦ ♦ ♦

Notice of Public Hearing on Proposed Updates to Breast and Cervical Cancer Services (BCCS) Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on July 15, 2024, at 9:00 a.m., to receive public comments on proposed updates to BCCS payment rates.

This hearing will be conducted as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

https://attendee.gotowebinar.com/register/1955212489642655066

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing-in by phone will be provided after you register.

Members of the public may access a live stream of the meeting at https://www.hhs.texas.gov/about/live-archived-meetings. For the live stream, select the "North Austin Complex Live" tab. A recording of the hearing will be archived and accessible on demand at the same website under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code section 32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Any updates to the hearing details will be posted on the HHSC website at https://www.hhs.texas.gov/about/meetings-events.

Proposal. The effective date of the proposed payment rates for the BCCS program is September 1, 2024.

Methodology and Justification. The BCCS program follows the guidance of Texas Administrative Code (TAC), Title 26, Part 1, Chapter 371, Breast and Cervical Cancer Services, which specifies requirements and policies for the access and delivery of the BCCS program as well as payment guidelines.

The specific administrative rules that guide the establishment of the fees in this proposal include in the following TAC rules:

Section 355.8061, Outpatient Hospital Reimbursement;

Section 355.8085, Reimbursement Methodology for Physicians and Other Practitioners; and

Section 355.8641 - Reimbursement Methodology for the Women's Health Program.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at https://pfd.hhs.texas.gov/rate-packets on or after July 1, 2024. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (737) 867-7817; by fax at (512) 730-7475; or by e-mail at PFDAcuteCare@hhs.texas.gov.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to PFDAcuteCare@hhs.texas.gov. In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St., Austin, Texas 78751.

Preferred Communication. For quickest response please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (737) 867-7817 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202402665
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 18, 2024

♦ ♦ ♦

Public Notice: Amendments to the Texas State Plan for Medical Assistance

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Transmittal Number 24-0006 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this proposed amendment is to implement state statutory requirements in House Bill (H.B.) 1575, 88th Texas Legislature, Regular Session, 2023 related to expanding the types of providers who can provide Case Management for Children and Pregnant Women (CPW) services. The two new provider types are doulas and community health workers.

Additionally, the 88th Legislature modified the eligible postpartum period in H.B. 12 to require continued medical assistance to eligible pregnant women for 12 months. This amendment includes conforming changes made by TN 23-0028 implementing H.B. 12. Other non-substantive updates have been done to formatting and language.

The proposed amendment is effective September 1, 2024.

The proposed amendment is estimated to have no fiscal impact. The addition of new provider types, doulas and community health workers, as eligible Medicaid providers case management services is not expected to increase Medicaid utilization or cost because HHSC already reimburses the existing CPW providers at the same rate for the same services provided by licensed nurses and social workers. Eligible pregnant recipients must continue to qualify by having a high-risk condition.

To obtain copies of the proposed amendment, interested parties may contact Nicole Hotchkiss, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 438-5035; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. The Access and Eligibility Services for local benefit offices will post and have copies of the amendment available for review.

TRD-202402698
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 19, 2024

♦ ♦ ♦

Public Notice - DBMD Amendment 1

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Deaf Blind with Multiple Disabilities (DBMD) program. HHSC administers the DBMD Program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the DBMD waiver application through February 29, 2028. The proposed effective date for this amendment is January 1, 2025.

The amendment request proposes to make changes to Appendix C, G, I, and J based on House Bill (H.B.) 4169 and H.B. 4696 of the 88th Legislature, Regular Session, 2023.

H.B. 4169 establishes a service similar to prevocational service named employment readiness. H.B 4696 requires that allegations of abuse, neglect, and exploitation that formerly had to be reported to the Texas Department of Family and Protective Services (DFPS) must now instead be reported to HHSC.

Appendix C

HHSC updated Appendix C to add employment readiness as a new service to be provided in the DBMD program, including provider qualifications.

HHSC clarified the qualifications of a service provider in the individualized skills and socialization "Provider Qualifications" section to align with existing policy that the individual's legally authorized representative can be the service provider if they are not the parent of an individual who is a minor, the spouse of a minor's parent, or the spouse of the individual.

HHSC removed the provider certification "first aid" requirement from case management, residential habilitation, respite, supported employment, assisted living, employment assistance, and intervener to align with current policy.

HHSC clarified the contract monitoring review process to align with existing policy by adding language indicating when a provider is required to submit a corrective action plan.

HHSC removed references to the term "Sanction Action Review Committee" and replaced it with "Adverse Action Review Committee."

Appendix G

Appendix G is being updated to reflect the change in reporting from DFPS to HHSC.

Appendix I

HHSC included information about the rate methodology for the new employment readiness service. Due to character limits in Appendix I, this change is located in Main-B. Optional.

HHSC updated contract monitoring activities to align with current policy by replacing the phrase "request an immediate protection plan" with "request a corrective action plan."

Appendix J

HHSC added employment readiness to the waiver service coverage charts and updated the projected utilization for the new employment readiness service for waiver years two through five.

HHSC incorporated final fiscal year 2024 rates into the amendment.

Miscellaneous

HHSC updated certain Texas Administrative Code (TAC) references from Title 40 to Title 26 for accuracy throughout appendices C and G to align with current policy.

HHSC does not expect a fiscal impact in annual aggregate expenditures for the employment readiness service. House Bill 4169 requires the new employment readiness to not exceed the previously established reimbursement rate for individualized skills and socialization services and if the service is combined with individualized skills and socialization services, the service may not exceed the total allowable hours or the total costs for individualized skills and socialization services provided under a service plan.

The DBMD waiver provides community-based services and supports to individuals with legal blindness, deafness, or a condition that leads to deafblindness, and at least one additional disability that limits functional abilities and who live in their own homes or in the home of another person, such as a family member or in a small group home setting. Services and supports are intended to enhance quality of life, functional independence, health and welfare, and to supplement, rather than replace, existing informal or formal supports and resources.

Current services in the DBMD waiver are case management, residential habilitation, respite (in-home and out of home), supported employment, prescribed medications, financial management services, support consultation, adaptive aids and medical supplies, assisted living, audiology services, behavioral support, chore services, dental treatment, dietary services, employment assistance, intervener, minor home modifications, nursing, occupational therapy services, orientation and mobility, physical therapy services, speech, hearing and language therapy, transition assistance services and individualized skills and socialization.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Jayasree Sankaran by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers

Comments about the proposed waiver amendment must be submitted to HHSC by July 29, 2024.

The HHSC Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the amendment available for review.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jayasree Sankaran, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4331

Fax

Attention: Jayasree Sankaran, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202402684
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 19, 2024

♦ ♦ ♦

Public Notice - HCS Amendment

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Home and Community-based Services (HCS) waiver program authorized under §1915(c) of the Social Security Act. CMS has approved the HCS waiver application through August 31, 2028. The proposed effective date for the amendment is January 1, 2025.

The amendment proposes to make the following changes to Appendix C, I and J, based on House Bill (H.B.) 4169, 88th Legislature, Regular Session, 2023 which establishes a service similar to prevocational service named employment readiness in the HCS program.

Appendix C and J

HHSC added employment readiness as a new service to be provided in the HCS Program, including service provider qualifications. HHSC added projections for the new service under Appendix J for waiver years 2 through 5.

HHSC incorporated final fiscal year 2024 rates into the amendment.

Appendix I

Added language to reflect the rate methodology for the new service, employment readiness. Due to character limits in Appendix I, this change is located in Main-B. Optional.

HHSC does not expect a fiscal impact in annual aggregate expenditures for the employment readiness service. House Bill 4169 requires the new employment readiness to not exceed the previously established reimbursement rate for individualized skills and socialization services and if the service is combined with individualized skills and socialization services, the service may not exceed the total allowable hours or the total costs for individualized skills and socialization services provided under a service plan.

The HCS waiver provides services and supports to individuals with intellectual disabilities who live in their own homes, in the home of a family member, or another community setting such as a three-person or four-person residence operated by an HCS program provider. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources. Current services in the HCS waiver include individualized skills and socialization, respite, supported employment, adaptive aids, audiology, occupational therapy, physical therapy, prescribed drugs, speech and language pathology, financial management services, support consultation, behavioral support, cognitive rehabilitation therapy, dental treatment, dietary services, employment assistance, minor home modifications, nursing, residential assistance, social work, supporting home living, and transition assistance services.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Julyya Alvarez by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment request may also be obtained online on the HHSC website at:

https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers

Comments about the proposed waiver amendment must be submitted to HHSC by July 29, 2024.

The Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the amendment available for review.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Julyya Alvarez, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Julyya Alvarez, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202402685
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 19, 2024

♦ ♦ ♦

Public Notice - TxHML Amendment

The Texas Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the waiver application for the Texas Home Living (TxHmL) program. HHSC administers the TxHmL program under the authority of Section 1915(c) of the Social Security Act. CMS has approved the TxHmL waiver application through February 28, 2027. The proposed effective date for this amendment is January 1, 2025.

The amendment proposes to make the following changes to Appendix C, E, I and J, based on House Bill (H.B.) 4169, 88th Legislature, Regular Session, 2023 which establishes a service similar to prevocational service named employment readiness in the TxHmL program.

Appendix C, E and J

HHSC added employment readiness as a new service to be provided in the TxHmL program, as well as the service provider qualifications and an explanation that an individual may receive the new service through the consumer-directed services option. HHSC also added employment readiness to the participant-directed services and waiver service coverage charts and added projections for the new service under Appendix J for waiver years 3 through 5.

Final fiscal year 2024 rates were incorporated into the amendment.

Appendix I

Added language to reflect the rate methodology for the new service, employment readiness. Due to character limits in Appendix I, this change is located in Main-B. Optional.

HHSC does not expect a fiscal impact in annual aggregate expenditures for the employment readiness service. House Bill 4169 requires the new employment readiness to not exceed the previously established reimbursement rate for individualized skills and socialization services and if the service is combined with individualized skills and socialization services, the service may not exceed the total allowable hours or the total costs for individualized skills and socialization services provided under a service plan.

The TxHmL waiver provides services and supports to individuals with intellectual disabilities who live in their own homes or in the home of another person, such as a family member. Services and supports are intended to enhance quality of life, functional independence, and health and well-being in continued community-based living and to supplement, rather than replace, existing informal or formal supports and resources.

Current services in the TxHmL waiver are respite, supported employment, prescription medications, financial management services, support consultation, adaptive aids, minor home modifications, audiology services, behavioral support, community support, dental treatment, dietary services, employment assistance, occupational therapy services, physical therapy services, nursing, speech-language pathology services, and individualized skills and socialization.

To obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments about the amendment, please contact Julyya Alvarez by U.S. mail, telephone, fax, or email at the addresses and numbers below. A copy of the proposed waiver amendment may also be obtained online on the HHSC website at:

https://www.hhs.texas.gov/laws-regulations/policies-rules/waivers

Comments about the proposed waiver amendment must be submitted to HHSC by July 29, 2024.

The Access and Eligibility Services for local benefit offices will post this notice for 30 days and will have copies of the amendment available for review.

Addresses:

U.S. Mail

Texas Health and Human Services Commission

Attention: Julyya Alvarez, Waiver Coordinator, Federal Coordination, Rules and Committees

701 West 51st Street, Mail Code H-310

Austin, Texas 78751

Telephone

(512) 438-4321

Fax

Attention: Julyya Alvarez, Waiver Coordinator at (512) 323-1905

Email

TX_Medicaid_Waivers@hhs.texas.gov

TRD-202402686
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 19, 2024

♦ ♦ ♦

Department of State Health Services

Correction of Error

The Texas Health and Human Services Commission (HHSC) proposed amendments to 25 TAC Chapter 289 in the June 14, 2024, issue of the *Texas Register* (49 TexReg 4200). Due to an error by the Texas Register, the proposed amendments included incorrect text.

The text for §289.201(b) should have read as follows:

(26) [(27)] Committed effective dose equivalent ($H_{E,50}$) [($H_{E,50}$)]--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \Sigma W_T H_{T,50}$) [($H_{E,50} = \Sigma W_T H_{T,50}$)].

(30) [(31)] Curie (Ci)--A unit of measurement of radioactivity. One curie (Ci) is the [that] quantity of radioactive material that decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie (mCi) and the microcurie (Ci). One mCi = 1×10^{-3} Ci = 3.7×10^{7} dps. One Ci = 1×10^{-6} Ci = 3.7×10^{4} dps. One nanocurie (nCi) = 1×10^{-9} Ci = 3.7×10^{1} dps. One picocurie (pCi) = 1×10^{-12} Ci = 3.7×10^{-2} dps.

(42) Effective dose equivalent (H_E) [(H_E)]--The sum of the products of the dose equivalent to each organ or tissue (H_T) [(H_T)] and the weighting factor (W_T) [(W_T)] applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma W_T H_T$) [($H_E = \Sigma W_T H_T$)].

The text for §289.202(ff)(2)(H) should have read as follows:

(H) The dose rate at 3.28 feet (1 m) from the surface of any package containing stabilized waste does [shall] not exceed 20 microrem (μrem) [μrem] per hour or 0.20 microsieverts (μSv) [μSv] per hour, above background.

The text for §289.202(ggg)(2)(B) should have read as follows:

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by Reference Man ["Reference Man"] that would result in either a committed effective dose equivalent of 5 rem [rems] (0.05 Sv), stochastic ALI, or a committed dose equivalent of 50 rem [rems] (0.5 Sv) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rem [rems] (0.05 Sv). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T [w_T]. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of wT are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(vi) The use of the ALIs listed first, the more limiting of the stochastic and non-stochastic ALIs, will ensure non-stochastic effects are avoided and risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. The licensee must also ensure the 50 rem (0.5 Sv) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep dose equivalent plus the internal committed dose equivalent to that organ, not the effective dose. For the case where there is no external dose contribution, this is demonstrated if the sum of the fractions of the non-stochastic ALIs (ALI_{ns}) contributing to the committed dose equivalent to the organ receiving the highest dose does not exceed unity, that is, Σ (intake in μCi of each radionuclide/ALI_{ns}) < 1.0. If there is an external deep dose equivalent contribution (H_d), then this sum must be less than 1 - (H_d/50), instead of < 1.0.

[Figure: 25 TAC §289.202(ggg)(2)(B)(vi)]

The text for §289.253(i)(1) should have read as follows:

(i) Radiation survey instruments.

(1) The licensee or registrant must [shall] maintain a sufficient number of calibrated and operable radiation survey instruments capable of detecting beta and gamma radiation at each location where sources of radiation are stored or used to make physical radiation surveys, as required by this section and by §289.202(p) or §289.231(s)[,] of this chapter [title], as applicable. Instrumentation must [shall] be capable of measuring 0.1 milliroentgen per hour (mR/hr) (1 microsievert per hour (μSv/hr)) through at least 50 mR/hr (500 μSv/hr). (Instrumentation capable of measuring 0.1 mR/hr (1 μSv/hr) through 50 mR/hr (500 μSv/hr) may not be sufficient to determine compliance with DOT requirements.)

The text for §289.253(v)(5) should have read as follows:

(5) Before releasing resins for unrestricted use, the resins must [they shall] be monitored in an area with a background level less than 0.05 mrem (0.5 microsieverts (μSv)) [(0.5 μSv)] per hour. The resins may

be released only if the survey does not detect radiation levels above background radiation levels. The survey meter used must [~~shall~~] be capable of detecting radiation levels of 0.05 mrem (0.5 μSv) per hour.

The text for §289.253(bb)(6) should have read as follows:

(6) Records required as specified in [~~accordance with~~] paragraphs (1) - (5) of this subsection must [~~shall also~~] include the dates, the identification of personnel [~~individual(s)~~] making the survey, the unique identification of survey instruments [~~instrument(s)~~] used, radiation measurements in milliroentgen per hour (mR/hr), calculations in millirem per hour (mrem/hr) or microsievert per hour (μSv/hr) [~~(microsievert per hour (μSv/hr))~~], and an exact description of the location of the survey. Each licensee or registrant must [~~shall~~] make and maintain records of these surveys as specified in [~~accordance with~~] subsection (ee)(5) of this section.

The text for §289.257(u)(6)(B)(v) and (v) should have read as follows:

(v) organizational revisions ensuring [~~that ensure that~~] persons and organizations performing QA [~~quality assurance~~] functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations.

(C) Each QA [~~quality assurance~~] program approval holder must [~~shall~~] maintain records of QA [~~quality assurance~~] program changes.

(v) Quality control program. Each shipper must [~~shall~~] adopt a quality control program ensuring [~~to include verification of the following to ensure that~~] shipping containers are suitable for shipments to a licensed disposal facility by verifying:

(1) identification of appropriate containers [~~container(s)~~];

(2) container testing documentation is adequate;

(3) appropriate container used;

(4) container packaged appropriately;

(5) container labeled appropriately;

(6) manifest filled out appropriately; and

(7) documentation maintained of each step.

TRD-202402680

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for Assured Guaranty Corp., a foreign fire and/or casualty company, to change its name to Assured Guaranty Inc. The home office is in New York, New York.

Application to do business in the state of Texas for Auros Reciprocal Insurance Exchange, a foreign reciprocal exchange. The home office is in Madison, Mississippi.

Application to do business in the state of Texas for First Founders Assurance Company, a foreign fire and/or casualty company. The home office is in Chester, New Jersey.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202402577

Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: June 12, 2024

♦ ♦ ♦

Company Licensing

Application to do business in the state of Texas for West Virginia National Auto Insurance Company, a foreign fire and/or casualty company. The home office is in Morgantown, West Virginia.

Any objections must be filed with the Texas Department of Insurance within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202402691
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: June 19, 2024

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2623 "LIMITED EDITION MEGA LOTERIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2623 is "LIMITED EDITION MEGA LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2623 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2623.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: ARMADILLO SYMBOL, BAT SYMBOL, BICYCLE SYMBOL, BLUEBONNET SYMBOL, BOAR SYMBOL, BUTTERFLY SYMBOL, CACTUS SYMBOL, CARDINAL SYMBOL, CHERRIES SYMBOL, CHILE PEPPER SYMBOL, CORN SYMBOL, COVERED WAGON SYMBOL, COW SYMBOL, COWBOY HAT SYMBOL, COWBOY SYMBOL, DESERT SYMBOL, FIRE SYMBOL, FOOTBALL SYMBOL, GEM SYMBOL, GUITAR SYMBOL, HEN SYMBOL, HORSE SYMBOL, HORSESHOE SYMBOL, JACKRABBIT SYMBOL, LIZARD SYMBOL, LONE STAR SYMBOL, MARACAS SYMBOL, MOCKINGBIRD SYMBOL, MOONRISE SYMBOL, MORTAR PESTLE SYMBOL, NEWSPAPER SYMBOL, OIL RIG SYMBOL, PECAN TREE SYMBOL, PIÑATA SYMBOL, RACE CAR SYMBOL, RATTLESNAKE SYMBOL, ROADRUNNER SYMBOL, SADDLE SYMBOL, SHIP SYMBOL, SHOES SYMBOL, SOCCER BALL SYMBOL, SPEAR SYMBOL, SPUR SYMBOL, STRAWBERRY SYMBOL, SUNSET SYMBOL, WHEEL SYMBOL, WINDMILL SYMBOL, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200, $500, $1,000 and $5,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2623 - 1.2D

PLAY SYMBOL	CAPTION
ARMADILLO SYMBOL	ARMADILLO
BAT SYMBOL	BAT
BICYCLE SYMBOL	BICYCLE
BLUEBONNET SYMBOL	BLUEBONNET
BOAR SYMBOL	BOAR
BUTTERFLY SYMBOL	BUTTERFLY
CACTUS SYMBOL	CACTUS
CARDINAL SYMBOL	CARDINAL
CHERRIES SYMBOL	CHERRIES
CHILE PEPPER SYMBOL	CHILE PEPPER
CORN SYMBOL	CORN
COVERED WAGON SYMBOL	COVERED WAGON
COW SYMBOL	COW
COWBOY HAT SYMBOL	COWBOY HAT
COWBOY SYMBOL	COWBOY
DESERT SYMBOL	DESERT
FIRE SYMBOL	FIRE
FOOTBALL SYMBOL	FOOTBALL
GEM SYMBOL	GEM
GUITAR SYMBOL	GUITAR
HEN SYMBOL	HEN
HORSE SYMBOL	HORSE
HORSESHOE SYMBOL	HORSESHOE
JACKRABBIT SYMBOL	JACKRABBIT
LIZARD SYMBOL	LIZARD
LONE STAR SYMBOL	LONE STAR
MARACAS SYMBOL	MARACAS
MOCKINGBIRD SYMBOL	MOCKINGBIRD

MOONRISE SYMBOL	MOONRISE
MORTAR PESTLE SYMBOL	MORTAR PESTLE
NEWSPAPER SYMBOL	NEWSPAPER
OIL RIG SYMBOL	OIL RIG
PECAN TREE SYMBOL	PECAN TREE
PIÑATA SYMBOL	PIÑATA
RACE CAR SYMBOL	RACE CAR
RATTLESNAKE SYMBOL	RATTLESNAKE
ROADRUNNER SYMBOL	ROADRUNNER
SADDLE SYMBOL	SADDLE
SHIP SYMBOL	SHIP
SHOES SYMBOL	SHOES
SOCCER BALL SYMBOL	SOCCER BALL
SPEAR SYMBOL	SPEAR
SPUR SYMBOL	SPUR
STRAWBERRY SYMBOL	STRAWBERRY
SUNSET SYMBOL	SUNSET
WHEEL SYMBOL	WHEEL
WINDMILL SYMBOL	WINDMILL
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$5,000	FVTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2623), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2623-0000001-001.

H. Pack - A Pack of the "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game No. 2623.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-two (72) Play Symbols. PLAYBOARDS 1 & 2: 1) The player completely scratches the CALLER'S CARD area to reveal 28 symbols. 2) The player scratches ONLY the symbols on both PLAYBOARDS that exactly match the symbols revealed on the CALLER'S CARD. 3) If the player reveals a complete row, column or diagonal line on either PLAYBOARD, the player wins the prize for that line. BONUS GAMES: The player scratches ONLY the symbols on the BONUS GAMES that exactly match the symbols revealed on the CALLER'S CARD. If the player reveals 2 symbols in the same GAME, the player wins the PRIZE for that GAME. TABLAS DE JUEGO 1 Y 2: 1) El jugador raspa completamente la CARTA DEL GRITÓN para revelar 28 símbolos. 2) El jugador SOLAMENTE raspa los símbolos en las dos TABLAS DE JUEGO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. 3) Si el jugador revela una línea completa, horizontal, vertical o diagonal en cualquiera TABLA DE JUEGO, el jugador gana el premio para esa línea. JUEGOS DE BONO: El jugador SOLAMENTE raspa los símbolos en los JUEGOS DE BONO que son exactamente iguales a los símbolos revelados en la CARTA DEL GRITÓN. Si el jugador revela 2 símbolos en el mismo JUEGO, el jugador gana el PREMIO para ese JUEGO. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-two (72) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-two (72) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-two (72) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-two (72) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a de-

fective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to eight (8) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. PLAYBOARDS/TABLAS DE JUEGO: There will be no identical Play Symbols in the CALLER'S CARD/CARTA DEL GRITÓN play area.

D. PLAYBOARDS/TABLAS DE JUEGO: At least fourteen (14) but no more than twenty-six (26) CALLER'S CARD/CARTA DEL GRITÓN Play Symbols will match a Play Symbol on either PLAYBOARD/TABLA DE JUEGO play area.

E. PLAYBOARDS/TABLAS DE JUEGO: No identical Play Symbols are allowed on the same PLAYBOARD/TABLA DE JUEGO play area.

F. BONUS GAMES/JUEGOS DE BONO: Every BONUS GAME/JUEGO DE BONO Grid will match at least one (1) Play Symbol to the CALLER'S CARD/CARTA DEL GRITÓN play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game prize of $10.00, $15.00, $20.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game prize of $1,000, $5,000 or $250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "LIMITED EDITION MEGA LOTERIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 25,200,000 Scratch Tickets in Scratch Ticket Game No. 2623. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2623 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	2,772,000	9.09
$15.00	1,008,000	25.00
$20.00	1,008,000	25.00
$30.00	1,512,000	16.67
$50.00	504,000	50.00
$100	254,100	99.17
$200	55,440	454.55
$500	4,200	6,000.00
$1,000	1,260	20,000.00
$5,000	140	180,000.00
$250,000	10	2,520,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2623 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2623, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202402661

Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 18, 2024

♦ ♦ ♦

Texas Public Finance Authority

Request for Qualifications for Management Consulting Services

Texas Register Posting/ESBD/Notice Language to Distribution List

The Texas Public Finance Authority ("TPFA") issues a Request for Qualifications ("RFQ") inviting interested vendors to submit their Statement of Qualifications for Management Consulting Services to evaluate the efficiency and effectiveness of key agency functions that are dependent upon specialized data input, retention, and retrieval, and then to plan and implement desired enhancements to key operational functions. Respondents shall provide information, evidence and demonstrated qualifications that will permit awarding a contract in a manner that provides the best value to the TPFA. The TPFA requires the assistance of a management consultant in assisting with the review of management policies, the review of operational procedures and resources, and to identify and implement feasible, real-time operational improvements. Respondents wishing to act as a consultant to the Agency, and able to meet the terms of the RFQ, are invited to submit demonstrated relevant experience and qualifications in support of evaluating the efficiency and effectiveness of key agency functions that are dependent upon specialized data input, retention, and retrieval, and then to plan and implement desired enhancements to key operational functions.

A copy of the RFQ is available on the TPFA's website at http://www.tpfa.texas.gov/rfp.aspx and the Electronic State Business Daily ("ESBD") at http://www.txsmartbuy.com/esbd.

Responses are due no later than 3:00 p.m. (CST) on July 15, 2024, pursuant to the instructions in the RFQ.

TRD-202402639
Devyn F. WIlls
Assistant General Counsel
Texas Public Finance Authority
Filed: June 14, 2024

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application Petition for Amendment to Certificate of Convenience and Necessity and Name Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 15, 2023, to amend certificates of convenience to add approximately 72 acres in Fort Bend County and for a name change to add the assumed name of Blue Topaz Utilities.

Docket Title and Number: Application of T & W Water Service Company dba Blue Topaz Utilities to Amend Its Certificates of Convenience and Necessity in Fort Bend County, Docket Number 54758.

T & W Water Service Company filed an application to amend two certificates of convenience and necessity number 12892 and 21127 to add approximately 72 acres in Fort Bend County and for a name change to add the assumed name of Blue Topaz Utilities.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1 (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 54758.

TRD-202402645
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 17, 2024

♦ ♦ ♦

Texas Windstorm Insurance Association

Request for Quotes Posted

TWIA invites all qualified Respondents to submit quotes in accordance with the requirements outlined in the below-listed Request for Quote (RFQ) issued by TWIA.

The purpose of the RFQ is to obtain quotes from qualified Respondents for specified required and requested services related to a phone system for daily call processing as well as scaled operations during a catastrophic weather event.

A copy of the RFQ is available at https://www.twia.org/vendor-requests/.

For more information on the requirements for quotes to be submitted by interested Respondents, please contact the Vendor and Contract Manager at vendormanagement@twia.org.

Important deadlines pertaining to the RFQ are as follows:

RFQ Title: New Phone System

RFQ Issuance Date: June 10, 2024

Quote Due Date: July 12, 2024

Anticipated Provisional RFQ Award Date: July 26, 2024

TRD-202402583
Brooke Adam
Risk Manager
Texas Windstorm Insurance Association
Filed: June 13, 2024

♦ ♦ ♦

TWIA HR Request for Proposals

TWIA invites all qualified Respondents to submit proposals in accordance with the requirements outlined in the below-listed Request for Proposals (RFP) issued by TWIA.

The purpose of this RFP is to obtain proposals from qualified Respondents to provide professional services related to our fully insured employee benefit package offering. This includes, but is not limited to, management and administrative services relating to health (including prescription plans and wellness), dental, vision, group life/AD&D, long term disability, HSA, FSA, COBRA, EAP programs, ancillary/voluntary benefits, and other benefits. Services to the Association should include compliance, cost analysis and savings, strategic planning and any other services that may be suggested to benefit the Association and the current benefit package offerings. The Association seeks a broker experienced in the benefits market and advising all levels of staff and management.

A copy of the RFP was posted to https://www.twia.org/vendor-requests/ on June 13, 2024.

For more information on the requirements for proposals to be submitted by interested Respondents, please contact the Vendor and Contract Manager at vendormanagement@twia.org.

Important deadlines pertaining to the RFP are as follows:

RFP Title	RFP Issuance Date	Proposal Due Date	Anticipated Provisional RFP Award Date
Employee Benefits Brokerage Services	June 13, 2024	July 12, 2024	July 26, 2024

♦ ♦ ♦

TRD-202402584
Brooke Adam
Risk Manager
Texas Windstorm Insurance Association
Filed: June 13, 2024


TEXAS

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is $502 annually for first-class mail delivery and $340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis