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 The purpose of the proposed repeal is to eliminate the outdated rule and replace it simultaneously with a new more germane rule.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

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**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

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# 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.

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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

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# 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

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# 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.

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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

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## 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.

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

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## 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.

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

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## 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.

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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

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## 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.

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Adriana Gonzales
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## 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.

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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

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## 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.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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# 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.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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# 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.

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Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: July 28, 2024
For further information, please call: (512) 676-6555

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# TITLE 30. ENVIRONMENTAL QUALITY

# PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) 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.

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# SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

## DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

### 30 TAC §§114.50, 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.

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## 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.

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## 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
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For further information, please call: (512) 239-6087

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# 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 $1.3 \times 10^5$ 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.

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## 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.

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Charmaine Backens
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Texas Commission on Environmental Quality
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## 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.

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## 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.

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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0634

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## 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.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0634

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## 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.

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Charmaine Backens
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## 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.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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# 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.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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## 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.

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D. Phillip Adkins
General Counsel
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## 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.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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**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.

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D. Phillip Adkins
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## 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.

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D. Phillip Adkins
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## 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.

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# 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

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## 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.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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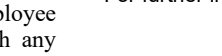

# PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

## 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.

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Stephanie Greger
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Texas Department of Criminal Justice
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# 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.

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# 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.

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