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 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) proposes amendments to §84.602 (relating to Filing of New Application), §84.608 (relating to Processing of Application), §84.611 (relating to Fees), §84.613 (relating to Denial, Suspension, or Revocation Based on Criminal History), §84.616 (relating to License Display), §84.617 (relating to License Term, Renewal, and Expiration), §84.705 (relating to Unclaimed Funds), §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)), §84.802 (relating to Non-Standard Contract Filing Procedures), §84.806 (relating to Format), §84.808 (relating to Model Clauses), and §84.809 (relating to Model Contract); and proposes new §84.710 (relating to Annual Report) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purpose of the proposed rule changes to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 84 was published in the *Texas Register* on May 31, 2024 (49 TexReg 3937). The commission received no official comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft.

Proposed amendments to §84.602 would update requirements for filing a new motor vehicle sales finance license application. Currently, §84.602(1)(A)(ii) requires a license application to identify a "responsible person" with substantial management responsibility for each proposed office. The proposal would replace the "responsible person" requirement in §84.602(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment would enable businesses to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each business lists an individual who can be contacted about compliance issues. In addition, a proposed amendment to §84.602(2)(A)(v) would remove language suggesting that license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

Proposed amendments to §84.608 would revise provisions governing the OCCC's denial of a motor vehicle sales finance license application. Under Texas Finance Code, §348.504(b), if the OCCC finds that a license applicant has not met the eligibility requirements for a license, then the OCCC will notify the applicant. Under Texas Finance Code, §348.504(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Proposed amendments at §84.608(d) would specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §348.504(b). Proposed amendments at §84.608(e) would revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §348.504(c). These amendments would ensure consistency with the license application denial process in Texas Finance Code, §348.504. The amendments are consistent with the OCCC's current practice for notifying an applicant of the intent to deny a license application.

Proposed amendments to §84.611 and proposed new §84.710 relate to annual reports filed by licensees. Under Texas Finance Code, §14.107, §16.003, and §348.506, the commission and the OCCC are authorized to set fees for the OCCC to carry out its statutory functions. Current §84.611(e)(1)(C) authorizes the OCCC to collect a variable annual assessment based on the dollar volume of transactions reported by a licensee in an annual renewal statement. Current §84.611(e)(3) describes the content and filing of the annual renewal statement. Proposed amendments would move this requirement to new §84.710, would redesignate the annual renewal statement as an "annual report," and would specify a June 30 deadline for filing the report. The new section is similar to rules for other OCCC licensees filing annual reports, such as the current rule for pawnshops at §85.502 (relating to Annual Report). The OCCC anticipates that it will begin requiring annual reports under new §84.710 beginning in 2026.

Proposed amendments to §84.613 relate to the OCCC's review of the criminal history of a motor vehicle applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The proposed amendments to §84.613 would ensure consistency with HB 1342, which the Texas Legislature enacted

in 2019. HB 1342 included a change to Texas Occupations Code, §53.022 relating to factors considered in determining whether an offense relates to the duties and responsibilities of the licensed occupation. Proposed amendments to §84.613(c)(2) would implement this statutory change from HB 1342.

Proposed amendments to §84.616 would make clarifying changes relating to license display. Currently, §84.616 requires a licensee to display its license prominently in a conspicuous location visible to the general public. The proposed amendments clarify that this requirement applies if a licensed location or registered office is open to the general public, and does not apply to a location or office that is not open to the general public (e.g., a servicing or collection office that operates exclusively online or by phone).

A proposed amendment to §84.617(e) would specify that the late filing fee for a registered office is $250, as provided by Texas Finance Code, §349.302. Another proposed amendment would remove current §84.617(f), which was a temporary provision that governed licenses obtained or renewed in 2019 or 2020.

Proposed amendments to §84.705 would make technical changes relating to the escheat of unclaimed funds. Amended text in §84.705(d) would reflect that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another proposed amendment would add a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Proposed amendments to §84.707 would update recordkeeping requirements for retail sellers that assign motor vehicle retail installment contracts to another holder. Under Texas Finance Code, §348.514 and §348.517, licensees must maintain records of each motor vehicle retail installment transaction, and licensees must allow the OCCC to access records pertaining to retail installment transactions. Currently, provisions throughout §84.707 refer to both paper and electronic recordkeeping systems. Proposed amendments throughout §84.707 would simplify and rearrange this language to refer to electronic recordkeeping systems before referring to paper systems, based on licensees' increasing use of electronic systems rather than paper systems. Currently, §84.707(d)(1) requires licensees to be able to provide a retail installment sales transaction report containing the date of the contract, the retail buyer's name, the account number, and other information, and §84.707(d)(3) requires licensees to be able to provide an assignment report. Proposed amendments at §84.707(d)(1) would specify that licensees must be able to sort or filter the retail installment transaction report by date of the contract or sale, the retail buyer's name, the status of the transaction (open or closed), whether the transaction has been assigned to another person, and the name of any assignee. The OCCC understands that licensees generally have this information available in existing systems, and this information will help ensure that the OCCC can effectively examine licensees under Texas Finance Code, Chapter 348.

In an informal precomment, an association of Texas motor vehicle dealers addressed the proposed amendments in §84.707(d)(1)(E) regarding sorting or filtering the transaction report. The precomment indicates that sorting or filtering by date, buyer's name, and transaction status "are possible," but sorting or filtering by assignment status and name of assignee "may be more problematic." The precomment did not explain how or why this requirement would be problematic. Under current §84.707(d)(3), §84.708(e)(4), and §84.709(e)(4), licensees are already required to be able to produce an assignment report showing assigned contracts with the name and address of each assignee. The commission maintains this portion of the sorting and filtering provisions in the proposed amendments to §84.707(d)(1)(E), because the commission and the OCCC believe that this information is important for ensuring that the OCCC can effectively conduct examinations and scope risks. However, the OCCC and the commission invite additional comments from stakeholders explaining how or why it would be problematic to sort or filter a transaction report by assignment information.

Additional proposed amendments to §84.707 relate to data security recordkeeping. A proposed amendment at §84.707(d)(8) specifies that licensees must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. Another proposed amendment at §84.707(d)(8) specifies that if a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4. A proposed amendment at §84.707(d)(9) specifies that licensees must maintain data breach notifications to consumers and to the Office of the Attorney General under Texas Business & Commerce Code, §521.053. Data security is a crucial issue. The OCCC's 2025-2029 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." A recent data breach affecting dealer management systems highlights the urgent need for vigilance in the motor vehicle sales finance industry. *See* "Car Dealerships in North America Revert to Pens and Paper After Cyberattacks on Software Provider" AP News (June 24, 2024). The proposed data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

Proposed amendments to §84.708 would update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The proposed amendments to §84.708 are similar to the proposed amendments to §84.707 described in the previous three paragraphs. In particular, the proposed amendments would simplify and rearrange language referring to electronic and paper recordkeeping systems, would specify requirements for sorting or filtering the retail installment sales transaction report, would specify requirements to maintain policies and procedures for an information security program, and would specify requirements to maintain data breach notifications. In addition, a proposed amendment at §84.708(d)(3) would specify requirements for sorting or filtering the currently required alphabetical records search, similar to the proposed requirements for the retail installment sales transaction report. Also, a proposed amendment at §84.708(e)(2)(L)(ii)(V) would remove a reference to the Texas Department of Public Safety's CR-2 crash report form and replace this with a more general reference to "any law enforcement crash report form." The OCCC understands that the CR-2 form is no longer used for crash reports in Texas.

Proposed amendments to §84.709 would update recordkeeping requirements for holders that take assignment of motor vehicle retail installment contracts. The proposed amendments to §84.709 are similar to the proposed amendments to §84.707 and

§84.708 described in the previous four paragraphs. In particular, the proposed amendments would simplify and rearrange language referring to electronic and paper recordkeeping systems, would specify requirements for sorting or filtering the alphabetical records search and retail installment sales transaction report, would replace a reference to the CR-2 crash report form with a more general reference, would specify requirements to maintain policies and procedures for an information security program, and would specify requirements to maintain data breach notifications.

Proposed amendments to §84.802 would reorganize and clarify the requirements for submitting non-standard plain language contracts. Under Texas Finance Code, §341.502(b), if a motor vehicle sales finance licensee uses a retail installment sales contract other than a model contract adopted by the commission, then the licensee must submit the contract to the OCCC for review. Currently, §84.802 describes the requirements for submitting these non-standard contracts to the OCCC. Under the proposal, subsection (a) would be amended to provide an up-front summary of the submission requirements, including the requirements under Texas Finance Code, §341.502. In particular, new paragraph (a)(3) would specify that non-standard loan contracts "must be consistent with Texas law and federal law." Currently, licensees are required to ensure that contracts comply with applicable law, and the OCCC's prescribed certification requires a person submitting a non-standard contract to certify compliance with state and federal law. If a contract contains illegal provisions, then the contract is misleading, and is not "easily understood by the average consumer" as required by Texas Finance Code, §341.502(a)(1). Before submitting a contract for review, licensees and form providers should work with their legal counsel and compliance staff to ensure that contracts comply with applicable law. Proposed amendments to subsection (b) would specify the grounds for disapproving a non-standard contract under Texas Finance Code, §341.502(c). These amendments replace language on the certification of readability, which would be moved into subsection (d). Proposed amendments to subsection (c) would specify that the subsection refers to the requirements for filing copies of the retail installment sales contract. Proposed amendments to subsection (d) would consolidate the rule's requirements for the submission form that must be submitted with the copies of the contract. The commission believes that it is helpful to reorganize these related requirements into a single subsection. The proposed amendments to §84.802 are consistent with the commission's 2022 amendments to the rule for submitting non-standard regulated loan contracts at §90.104 (relating to Non-Standard Contract Filing Procedures).

Proposed amendments to §84.806 would update the list of typefaces that are considered easily readable for plain language contracts. Under Texas Finance Code, §341.502(a)(2), retail installment sales contracts must be "printed in an easily readable font and type size." Currently, §84.806(b) lists the following typefaces considered to be readable: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman. The proposal would revise this list to add Georgia and Verdana, and to remove Caslon, Century Schoolbook, Garamond, and Scala. Since the commission originally adopted §84.806 in 2008, electronic contracts and screen reading have changed how consumers view contracts. The amendments to §84.806 are based on updated guidance for accessibility and screen reading, including guidance from federal agencies on typefaces that are considered accessible. *See, e.g.*, U.S. Department of Health and Human Services, Research-Based Web Design and Usability Guidelines, p. 106; Centers for Medicare & Medicaid Services, Section 508 Guide for Microsoft Word 2013, p. 5 (rev. 2018). Other amendments throughout §84.806 add a descriptive title to each subsection. The proposed amendments to §84.806 are consistent with the commission's 2022 amendments to the rule for formatting regulated loan contracts at §90.103 (relating to Format).

Proposed amendments to §84.808 would revise the model itemization of amount financed to refer to inspection program replacement fees and emissions inspection fees, following recent legislative changes. In 2023, the Texas Legislature passed HB 3297. HB 3297 repealed statutory provisions in Texas Transportation Code, Chapter 548 that generally required inspections for noncommercial vehicles. HB 3297 amended Texas Transportation Code, §548.509 and §548.510 to provide that an inspection program replacement fee will be remitted to the state. HB 3297 maintained existing provisions in Texas Health and Safety Code, Chapter 382 authorizing counties to require emissions inspections. HB 3297 will take effect on January 1, 2025. Proposed amendments to the figures accompanying §84.808(8)(A) and (B) would replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. Proposed amendments to §84.808(8)(E) and (F) would make conforming changes to the model clauses for inspection fees in the text of the rule. These changes will help ensure consistency with the amendments in HB 3297. The commission anticipates that the amendments to §84.808 will have a delayed effective date of January 1, 2025, to conform to the effective date of HB 3297. The OCCC does not intend to require licensees to resubmit non-standard plain language retail installment contracts that the OCCC has accepted since May 5, 2016. The clauses contained in §84.808 are model clauses, and licensees maintain some flexibility to disclose charges in a manner that is accurate and not misleading (e.g., disclosing the inspection program replacement fee on one of the extra lines in the "Other charges" section of the itemization of amount financed).

In an informal precomment, an association of Texas motor vehicle dealers stated: "As to 7 TAC §84.808. Model Clauses, a request is that the disclosure 'Government vehicle inspection program replacement fee' be shortened, such as 'Gov't inspection replacement fee' or some similar disclosure that does not take so much real estate on the forms as the buyer's order/purchase order is more limited in space than a retail installment contract." The commission declines to include this suggestion in the proposal. As discussed in the previous paragraph, use of the model clauses is optional. The model clauses do not restrict a licensee to using the exact same language in a buyer's order or in a submitted non-standard retail installment contract. A shorter label such as "Gov't inspection replacement fee" could be sufficient if it is disclosed in an accurate manner. However, for purposes of creating a model clause for a retail installment contract, the commission and the OCCC believe that the full label "Government vehicle inspection program replacement fee" is appropriate and provides clear information to the retail buyer. Therefore, the commission has maintained the text for this proposal.

Proposed amendments to §84.809 would revise the model motor vehicle retail installment contract. The proposed amendments to the figure accompanying §84.809(b) would replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. These changes would ensure consistency with HB 3297

and conform to the proposed amendments to §84.808, as discussed in the previous two paragraphs.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed rule changes are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will better enable licensees to comply with Chapter 348 of the Texas Finance Code and related legal requirements, will ensure that motor vehicle retail installment contracts are easily understood by consumers, and will ensure that the OCCC can efficiently process license applications and plain language contract filings.

In general, the OCCC does not anticipate economic costs to persons who are required to comply with the proposed rule changes. If there are economic costs, then the OCCC anticipates that these will be minimal. Regarding the proposed amendments related to producing transaction reports and search results in §§84.707, 84.708, and 84.709, the OCCC understands that licensees' existing systems generally have the capabilities described in the proposed amendments. Regarding the proposed amendments related to information security programs and data breach notifications in §§84.707, 84.708, and 84.709, licensees are required to develop this information by existing statutes and regulations outside of the proposed amendments, so any costs do not result from the proposed amendments. Regarding the annual report described in proposed new §84.710, the proposal moves the current requirement to file an annual renewal statement in §84.611 to a new section with substantially similar requirements.

Regarding the proposed amendments related to plain language contracts in §§84.802, 84.806, 84.808, and 84.809, the OCCC does not intend to require licensees to resubmit non-standard plain language retail installment contracts that the OCCC has accepted since May 5, 2016. Costs of drafting revised contracts may result from recent legislation regarding inspections and the inspection replacement fee, but these costs do not result from the proposed amendments. The OCCC has attempted to lessen potential costs of developing revised contracts by providing updated model clauses that are consistent with recent statutory changes related to itemized charges. Use of the updated model clauses is optional, and licensees maintain some flexibility to disclose charges in a manner that is accurate and not misleading (e.g., disclosing the inspection program replacement fee on one of the extra lines in the "Other charges" section of the itemization of amount financed).

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would create a new regulation at §84.710 containing annual report requirements that are substantially the same as the existing requirements for annual renewal statements in current §84.611(e)(3). The proposal would expand current §84.602 by specifying a requirement to identify a compliance officer, would expand current §84.608 to specify the process to deny a license application, would expand current §84.613 by amending grounds on which the OCCC may deny, suspend, or revoke a license on grounds of criminal history, would expand current §84.617 to specify the late filing fee for a registered office, would expand current §84.707, §84.708, and §84.709 to specify records that licensees must maintain, would expand current §84.802 by specifying requirements for submitting non-standard contracts, would expand current §84.806 by adjusting the list of readable typefaces, and would expand current §84.808 and §84.809 to add model language regarding inspection program replacement fees and emissions inspection fees. The proposal would limit current §84.602 by removing a requirement for a license applicant to identify a responsible person for each office, would limit §84.616 to specify circumstances when a license must be displayed, would limit §84.806 by adjusting the list of readable typefaces, and would limit current §84.808 and §84.809 to remove outdated language regarding inspection fees. The proposal would not repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

SUBCHAPTER F. LICENSING

7 TAC §§84.602, 84.608, 84.611, 84.613, 84.616, 84.617

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 348.

§84.602. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) (No change.)

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. [~~Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.~~]

(iii) - (v) (No change.)

(B) - (F) (No change.)

(2) Other required filings.

(A) Fingerprints.

(i) - (iv) (No change.)

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Motor Vehicles), fingerprints are still required to be submitted under [~~to the OCCC, as per~~] Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) - (D) (No change.)

(3) (No change.)

§84.608. Processing of Application.

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

(d) Notice of intent to deny application. If the OCCC does not find that the eligibility requirements for a license have been met, then the OCCC will send a notice of intent to deny the license application to the applicant.

(e) [~~(d)~~] Hearing. An [~~Whenever an application is denied, the~~] affected applicant has 30 calendar days from the date of the notice of intent to deny the license application [~~the application was denied~~] to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(f) [~~(e)~~] Denial. If an application has been denied, the assessment fee will be refunded to the applicant. The investigation fee and the fingerprint processing fee in §84.611 of this title (relating to Fees) will be forfeited.

(g) [~~(f)~~] Processing time.

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

§84.611. Fees.

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

(e) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each licensee consisting of:

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

(C) if necessary, a variable fee based upon the annual dollar volume of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, as stated in the annual report under §84.710 of this title (relating to Annual Report) [~~renewal statement described by paragraph (3) of this subsection~~].

(2) (No change.)

[~~(3) A licensee must file an annual renewal statement in connection with the license renewal. The licensee must provide the statement in a format prescribed by the OCCC and in accordance with the OCCC's instructions. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions. The annual renewal statement is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.514. A licensee's annual renewal statement relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual renewal statements that it collects.~~]

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

§84.613. Denial, Suspension, or Revocation Based on Criminal History.

(a) - (b) (No change.)

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 348 or 353, as provided by Texas Occupations Code, §53.021(a)(1).

(1) (No change.)

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

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

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

(D) the relationship of the crime to the ability or [~~,~~] capacity [~~, or fitness~~] required to perform the duties and discharge the responsibilities of a licensee; and [~~.~~]

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(3) (No change.)

(d) - (f) (No change.)

§84.616. License Display.

If a licensed location or registered office is open to the general public, then the licensee must prominently display the license in the location or office, [~~Licenses must be prominently displayed in a licensee's office~~] in a conspicuous location visible to the general public. This requirement

does not apply to a location or office that is not open to the general public (e.g., a servicing or collection office that operates exclusively online or by phone).

§84.617. License Term, Renewal, and Expiration.

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

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a $1,000 late filing fee. The late filing fee for a registered office is $250 under Texas Finance Code, §349.302.

~~[(f) Temporary provision. Notwithstanding subsections (a) and (d) of this section, if a licensee renews a license during 2019, or obtains a new license on or after August 1, 2019, then the license will be effective until October 31, 2020. The license must be renewed in order to remain in effect after October 31, 2020. This subsection expires on January 1, 2021.]~~

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 August 16, 2024.

TRD-202403782
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 936-7660

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SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.705, 84.707 - 84.709

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 348.

§84.705. Unclaimed Funds.

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

(d) Escheat to state. At the end of three years, the unclaimed funds must be paid to the Texas Comptroller of Public Accounts, Unclaimed Property [~~Treasury~~] Division, as required by Texas Property Code, §72.101 and §74.301, or must be paid to the appropriate state or other governmental entity under the time period provided by the other state's or entity's applicable law.

(e) (No change.)

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

(a) - (b) (No change.)

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, [~~electronic recordkeeping system, optically imaged recordkeeping system,~~] or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Records required.

(1) Retail installment sales transaction report.

(A) (No change.)

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either as an electronic system or as a paper record, [~~or may be generated from an electronic system or systems~~] so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is entered into by the licensee.

(C) - (D) (No change.)

(E) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or [~~a~~] paper [~~or imaged~~] copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (P) (No change.)

(3) - (7) (No change.)

(8) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(9) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including

any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

(a) - (b) (No change.)

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, [~~electronic recordkeeping system, optically imaged recordkeeping system,~~] or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(10) [~~(e)~~(9)] of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(3) Sorting or filtering. Upon request, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report.

(A) (No change.)

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either an electronic system or as a paper record, [~~or may be generated from an electronic system or systems~~] so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is made or acquired.

(C) - (D) (No change.)

(E) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or [~~a~~] paper [~~or imaged~~] copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (K) (No change.)

(L) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) (No change.)

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) - (IV) (No change.)

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form [~~the Texas Department of Public Safety's "Crash Report" (Form CR-2)~~] filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(M) - (U) (No change.)

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate electronic or paper [~~, or an electronic~~] record [~~,~~] must be maintained covering each retail installment sales contract. The electronic or paper [~~or electronic~~] account record must be readily available by reference to either a retail buyer's name or account number.

(A) - (C) (No change.)

(4) - (5) (No change.)

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, electronic or paper [~~or electronic~~], reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) - (10) (No change.)

(f) (No change.)

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

(a) - (b) (No change.)

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, [~~electronic recordkeeping system, optically imaged recordkeeping system,~~] or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

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

(3) Sorting or filtering. Upon request, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired. [~~A retail installment sales transaction report must contain the following information:~~]

(A) A retail installment sales transaction report must contain the following information: [~~the date of contract (day, month, and year);~~]

(i) the date of contract (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and

(iv) the account number.

(B) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following: [~~the retail buyer's name(s);~~]

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

[~~(C) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and~~]

[~~(D) the account number.~~]

(2) Retail installment sales transaction file. A licensee must maintain an electronic or [~~a~~] paper [~~or imaged~~] copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) - (D) (No change.)

(E) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) (No change.)

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) - (IV) (No change.)

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form [~~the Texas Department of Public Safety's "Crash Report" (Form CR-2)~~] filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(F) - (J) (No change.)

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate electronic or paper [~~, or an electronic~~] record [~~,~~] must be maintained covering each retail installment sales contract. The electronic or paper [~~or electronic~~] account record must be readily available by reference to either a retail buyer's name or account number.

(A) - (C) (No change.)

(4) - (5) (No change.)

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, electronic or paper [~~or electronic~~], reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) - (9) (No change.)

(f) (No change.)

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

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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Matthew Nance
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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7 TAC §84.710

The rule is proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 348.

§84.710. Annual Report.

(a) Generally. Each licensee must file an annual report with the OCCC. The annual report is due June 30 of each year for the prior calendar year's transaction activity. The licensee must provide the annual report in a format prescribed by the OCCC and in accordance with the OCCC's instructions.

(b) Required information. The statement must include the annual dollar volume and number of retail installment sales contracts originated, acquired, or serviced during the preceding calendar year, calculated in accordance with the OCCC's instructions, and any other information required under the OCCC's instructions.

(c) Confidentiality. The annual report is collected under the OCCC's examination authority, as provided by Texas Finance Code, §348.514. A licensee's annual report relates to the examination process and is confidential under Texas Finance Code, §14.2015(a) and §348.514(d). However, the OCCC may publish aggregated reports based on the annual reports that it collects.

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 H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.802, 84.806, 84.808, 84.809

The rule changes are proposed under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also proposed under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 341 and 348.

§84.802. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that uses clauses other than [~~does not use~~] the model contract provisions. Before a licensee uses a non-standard contract, the contract must be submitted to the OCCC for review under Texas Finance Code, §341.502(c). A non-standard contract: [~~Non-standard contracts submitted in compliance with the provisions of Texas Finance Code, §341.502(c) will be reviewed to determine that the contract is written in plain language.~~]

(1) must be written in plain language designed to be easily understood by the average consumer, as required by Texas Finance Code, §341.502(a);

(2) must be printed in an easily readable font and type size, as required by Texas Finance Code, §341.502(a) and §84.806 of this title (relating to Format);

(3) must be consistent with Texas law and federal law;

(4) must include a notice with the OCCC's contact information, as required by Texas Finance Code, §14.104 and §86.101 of this title (relating to Consumer Notifications);

(5) must comply with the requirements described in subsection (c) of this section, including the maximum Flesch-Kincaid Grade Level score; and

(6) must be accompanied by a complete submission form containing the information required by subsection (d) of this section.

(b) Disapproval. If a non-standard contract filing fails to comply with one or more of the requirements listed in subsection (a) of this section, then the OCCC may disapprove the filing under Texas Finance Code, §341.502(c). A licensee must cease using a disapproved contract immediately after an order of disapproval takes effect, as provided by Texas Finance Code, §341.502(d). [~~Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.~~]

(c) Contract filing [~~Filing~~] requirements. Copies of the retail installment sales contract [~~Contract filings must be identified as to the transaction type. Contract filings~~] must be submitted in accordance with the OCCC's instructions and the following requirements:

(1) Microsoft Word format. One copy must be submitted in a Microsoft Word format with the document having either a .doc or .docx extension. The Flesch-Kincaid Grade Level score of the contract must be based on the Microsoft Word readability statistics function for the Microsoft Word version of the contract.

(2) PDF format. One copy must be submitted in a text-searchable PDF format so that the contract may be visually reviewed in its entirety. The page size must be 8.5 inches by 11 inches or 8.5 inches by 14 inches. The PDF may not be locked or restricted in a way that prohibits comparison of different versions of the contract.

(3) No other formats permitted. The OCCC will not accept paper filings or any other unlisted formats for non-standard contract filings.

(4) Maximum Flesch-Kincaid score. The maximum Flesch-Kincaid Grade Level score for a Chapter 348 contact filing is grade 11.

(d) Submission form. A non-standard contract must be accompanied by a written submission form prescribed by the OCCC. The submission form must be completed in accordance with the OCCC's instructions and the following requirements: [~~Contact person. One person must be designated as the contact person for each filing submitted. Each submission must provide the name, address, phone number, and if available, the email address and fax number of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.~~]

(1) Transaction chapter. The submission form must specify that the contract will be used under Texas Finance Code, Chapter 348.

(2) Contact person. The submission form must identify an individual as the contact person for the contract filing, and must include the individual's name, address, phone number, and email address. If a contract is submitted by a person other than a licensee, then the contract must be accompanied by a dated letter that contains a description of the anticipated users of the contract, and designates the legal counsel or other designated contact person for that filing.

(3) Certification of readability. The submission form must include a certification signed by an officer of the licensee or the entity submitting the form on behalf of the licensee. The certification must state that the contract is written in plain language and that the contract can be easily understood by the average consumer. The certification must also state that the contract is printed in an easily readable font and type size, including a list of the typefaces used in the contract, the font sizes used in the contract, and the Flesch-Kincaid Grade Level score of the contract. The OCCC will prescribe the form of the certification.

(e) (No change.)

§84.806. Format.

(a) Generally. Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code, §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) Typeface readability. The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include [:] Arial, Calibri, Georgia, [~~Caslon, Century Schoolbook, Garamond,~~] Helvetica, [~~Scala, and~~] Times New Roman, and Verdana.

(c) Titles and headings. Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis.

(d) Typeface size. Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in

the Times New Roman typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times New Roman typeface. A point is generally viewed as 1/72nd of an inch.

(e) Arrangement of model clauses. The model clauses may be arranged in any order. Additionally, the seller has considerable flexibility in the formatting and arrangement of the information contained in the model clauses.

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (7) (No change.)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:
Figure: 7 TAC §84.808(8)(A)
[~~Figure: 7 TAC §84.808(8)(A)~~]

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:
Figure: 7 TAC §84.808(8)(B)
[~~Figure: 7 TAC §84.808(8)(B)~~]

(C) - (D) (No change.)

(E) Inspection program replacement fee. Under Texas Transportation Code, §548.509 and §548.510, at the time of registration, the Texas Department of Motor Vehicles or a county assessor-collector will collect an inspection program replacement [~~a portion of the inspection~~] fee to be remitted to the state. The creditor may disclose the inspection program replacement fee on a line labeled "Government vehicle inspection program replacement fee." [~~by either of the following methods:~~]

~~*(i)* including the entire inspection fee in the "Government vehicle inspection fees" section, with the amounts paid to the state and the inspector documented immediately below this section with the following language: "to state $_____" and "to inspection station $_____"; or~~]

~~*(ii)* including the portion remitted to the state in the "Government license and registration fees" section, and the portion remitted to the inspection station in the "Government vehicle inspection fees" section.~~]

(F) Emissions inspection fee. A creditor may disclose a vehicle emissions inspection fee prescribed by law under Texas Health and Safety Code, Chapter 382, on a line labeled "Vehicle emissions inspection fee."

(G) [~~(F)~~] Benefit under trade-in credit agreement. A benefit provided under a trade-in credit agreement must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "trade-in credit agreement benefit."

(H) [~~(G)~~] Benefit under depreciation benefit optional member program. A benefit provided under a depreciation benefit optional member program must be included in the downpayment, and must be listed in the line labeled "other (describe)," with a description such as "depreciation benefit."

(9) - (32) (No change.)

§84.809. Model Contract; Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.
Figure: 7 TAC §84.809(b)
[~~Figure: 7 TAC §84.809(b)~~]

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

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

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.8, 3.14, 3.22, 3.30, 3.57, 3.91, 3.98

The Railroad Commission of Texas (Commission) proposes amendments to §§3.8, 3.14, 3.22, 3.30, 3.57, 3.91, and 3.98, relating to Water Protection; Plugging; Protection of Birds; Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ); Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials; Cleanup of Soil Contaminated by a Crude Oil Spill; and Standards for Management of Hazardous Oil and Gas Waste.

The Commission proposes amendments to §3.8 and §3.57 to remove all substantive language from the rules and replace with notice that the requirements are relocated to Chapter 4 of this title (relating to Environmental Protection) which is proposed in a concurrent rulemaking. Other proposed amendments update cross-references to certain Commission rules in conjunction with the proposed new and amended rules in Chapter 4.

To align with the proposed amendments and new rules in Chapter 4, the Commission proposes that the proposed amendments in §3.8 and §3.57 go into effect July 1, 2025, which is approximately six months after the anticipated default effective date.

The Commission notes that if the rulemaking timeline changes, the rules may be adopted at a later date. If that occurs, the proposed effective dates will be updated upon adoption.

Paul Dubois, Assistant Director, Technical Permitting, Oil & Gas Division, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be no additional costs to state government as a result of enforcing or administering the amendments. There will be no fiscal effect on local government.

Mr. Dubois has determined that for the first five years the proposed amendments are in effect, the primary public benefit will be consistency of rule references within Commission rules.

Mr. Dubois has determined that for each year of the first five years that the amendments will be in effect, there will be no economic costs for persons required to comply as a result of adoption of the proposed amendments.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on rural communities, small businesses, and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities, small businesses, or micro-businesses. The proposed amendments will not have an adverse economic effect on rural communities, small businesses, or micro-businesses. Therefore, the regulatory flexibility analysis is not required.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the amendments would be in effect, the proposed amendments would not: create or eliminate a new government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 pm on Monday, September 30, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Dubois at (512) 463-6778. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendments to pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission.

Statutory authority: Texas Natural Resources Code §§81.051 and 81.052.

Cross reference to statute: Texas Natural Resources Code Chapter 81.

§3.8. Water Protection.

Effective July 1, 2025, the requirements of this section are incorporated in Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management).

~~[(a) The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) Basic sediment pit--Pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank. Basic sediment pits were formerly referred to as burn pits.]~~

~~[(2) Brine pit--Pit used for storage of brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility.]~~

~~[(3) Collecting pit--Pit used for storage of saltwater or other oil and gas wastes prior to disposal at a disposal well or fluid injection well. In some cases, one pit is both a collecting pit and a skimming pit.]~~

~~[(4) Completion/workover pit--Pit used for storage or disposal of spent completion fluids, workover fluids and drilling fluid, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed or worked over.]~~

~~[(5) Drilling fluid disposal pit--Pit, other than a reserve pit, used for disposal of spent drilling fluid.]~~

~~[(6) Drilling fluid storage pit--Pit used for storage of drilling fluid which is not currently being used but which will be used in future drilling operations. Drilling fluid storage pits are often centrally located among several leases.]~~

~~[(7) Emergency saltwater storage pit--Pit used for storage of produced saltwater for limited period of time. Use of the pit is necessitated by a temporary shutdown of disposal well or fluid injection well and/or associated equipment, by temporary overflow of saltwater storage tanks on a producing lease or by a producing well loading up with formation fluids such that the well may die. Emergency saltwater storage pits may sometimes be referred to as emergency pits or blowdown pits.]~~

~~[(8) Flare pit--Pit which contains a flare and which is used for temporary storage of liquid hydrocarbons which are sent to the flare during equipment malfunction but which are not burned. A flare pit is used in conjunction with a gasoline plant, natural gas processing plant, pressure maintenance or repressurizing plant, tank battery, or a well.]~~

[(9) Fresh makeup water pit--Pit used in conjunction with a drilling rig for storage of fresh water used to make up drilling fluid or hydraulic fracturing fluid.]

[(10) Gas plant evaporation/retention pit--Pit used for storage or disposal of cooling tower blowdown, water condensed from natural gas, and other wastewater generated at gasoline plants, natural gas processing plants, or pressure maintenance or repressurizing plants.]

[(11) Mud circulation pit--Pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.]

[(12) Reserve pit--Pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.]

[(13) Saltwater disposal pit--Pit used for disposal of produced saltwater.]

[(14) Skimming pit--Pit used for skimming oil off saltwater prior to disposal of saltwater at a disposal well or fluid injection well.]

[(15) Washout pit--Pit located at a truck yard, tank yard, or disposal facility for storage or disposal of oil and gas waste residue washed out of trucks, mobile tanks, or skid-mounted tanks.]

[(16) Water condensate pit--Pit used in conjunction with a gas pipeline drip or gas compressor station for storage or disposal of fresh water condensed from natural gas.]

[(17) Generator--Person who generates oil and gas wastes.]

[(18) Carrier--Person who transports oil and gas wastes generated by a generator. A carrier of another person's oil and gas wastes may be a generator of his own oil and gas wastes.]

[(19) Receiver--Person who stores, handles, treats, reclaims, or disposes of oil and gas wastes generated by a generator. A receiver of another person's oil and gas wastes may be a generator of his own oil and gas wastes.]

[(20) Director--Director of the Oil and Gas Division or his staff delegate designated in writing by the director of the Oil and Gas Division or the commission.]

[(21) Person--Natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.]

[(22) Affected person--Person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.]

[(23) To dewater--To remove the free water.]

[(24) To dispose--To engage in any act of disposal subject to regulation by the commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.]

[(25) Landfarming--A waste management practice in which oil and gas wastes are mixed with or applied to the land surface in such a manner that the waste will not migrate off the landfarmed area.]

[(26) Oil and gas wastes--Materials to be disposed of or reclaimed which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in paragraph (30) of this subsection, and materials to be disposed of or reclaimed which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).]

[(27) Oil field fluids--Fluids to be used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and chemicals used to detoxify oil and gas wastes.]

[(28) Pollution of surface or subsurface water--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.]

[(29) Surface or subsurface water--Groundwater, percolating or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.]

[(30) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:]

[(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;]

[(B) the production of oil or gas or geothermal resources, including:]

[(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;]

[(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;]

[(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;]

[(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;]

[(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and]

[(vi) ~~activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;~~]

~~[(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and~~]

~~[(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901, et seq.).~~]

~~[(31) Mined brine--Brine produced from a brine mining injection well by solution of subsurface salt formations. The term "mined brine" does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.~~]

~~[(32) Brine mining pit--Pit, other than a fresh mining water pit, used in connection with activities associated with the solution mining of brine. Most brine mining pits are used to store mined brine.~~]

~~[(33) Fresh mining water pit--Pit used in conjunction with a brine mining injection well for storage of water used for solution mining of brine.~~]

~~[(34) Inert wastes--Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, fiberglass, and trash.~~]

~~[(35) Coastal zone--The area within the boundary established in Title 31, Texas Administrative Code, §503.1 (Coastal Management Program Boundary).~~]

~~[(36) Coastal management program (CMP) rules--The enforceable rules of the Texas Coastal Management Program codified at Title 31, Texas Administrative Code, Chapters 501, 505, and 506.~~]

~~[(37) Coastal natural resource area (CNRA)--One of the following areas defined in Texas Natural Resources Code, §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.~~]

~~[(38) Coastal waters--Waters under tidal influence and waters of the open Gulf of Mexico.~~]

~~[(39) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code, §33.203.~~]

~~[(40) Practicable--Available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity.~~]

~~[(41) Non-commercial fluid recycling--The recycling of fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), where the operator of the lease, or drilling unit, or non-commercial disposal or injection well treats or contracts with a person for the treatment of the fluid, and may accept such fluid from other leases and or operators.~~]

~~[(42) Non-commercial fluid recycling pit--Pit used in conjunction with one or more oil or gas leases or units that is constructed, maintained, and operated by the operator of record of the lease or unit and is located on an existing commission-designated lease or drilling unit associated with a commission-issued drilling permit, or upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title, for the storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated fluid.~~]

~~[(43) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title.~~]

~~[(44) Treated fluid-Fluid that has been treated using water treatment technologies to remove impurities such that the treated fluid can be reused or recycled. Treated fluid is not a waste but may become a waste if it is abandoned or disposed of rather than reused or recycled.~~]

~~[(45) Recyclable product--A reusable material as defined in §4.204(12) of this title (relating to Definitions).~~]

~~[(46) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year, as determined from maps or other data from the Federal Emergency Management Administration (FEMA), or, if not mapped by FEMA, from the United States Department of Agriculture soil maps.~~]

~~[(47) Distilled water--Water that has been purified by being heated to a vapor form and then condensed into another container as liquid water that is essentially free of all solutes.~~]

~~[(b) No pollution. No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.~~]

~~[(c) Exploratory wells. Any oil, gas, or geothermal resource well or well drilled for exploratory purposes shall be governed by the provisions of statewide or field rules which are applicable and pertain to the drilling, safety, casing, production, abandoning, and plugging of wells.~~]

~~[(d) Pollution control.~~]

~~[(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, subsection (e) of this section, or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to §3.9 of this title (relating to Disposal Wells) (Rule 9) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge~~

of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.]

[(2) Prohibited pits. No person may maintain or use any pit for storage of oil or oil products. Except as authorized by this subsection, no person may maintain or use any pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit. A person is not required to have a permit to use a pit if a receiver has such a permit, if the person complies with the terms of such permit while using the pit, and if the person has permission of the receiver to use the pit. The pits required by this paragraph to be permitted include, but are not limited to, the following types of pits: saltwater disposal pits; emergency saltwater storage pits; collecting pits; skimming pits; brine pits; brine mining pits; drilling fluid storage pits (other than mud circulation pits); drilling fluid disposal pits (other than reserve pits or slush pits); washout pits; and gas plant evaporation/retention pits. If a person maintains or uses a pit for storage of oil field fluids, or for storage or disposal of oil and gas wastes, and the use or maintenance of the pit is neither authorized by this subsection nor permitted, then the person maintaining or using the pit shall backfill and compact the pit in the time and manner required by the director. Prior to backfilling the pit, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.]

[(3) Authorized disposal methods.]

[(A) Fresh water condensate. A person may, without a permit, dispose of fresh water which has been condensed from natural gas and collected at gas pipeline drips or gas compressor stations, provided the disposal is by a method other than disposal into surface water of the state.]

[(B) Inert wastes. A person may, without a permit, dispose of inert and essentially insoluble oil and gas wastes including, but not limited to, concrete, glass, wood, and wire, provided the disposal is by a method other than disposal into surface water of the state.]

[(C) Low chloride drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming, provided the wastes are disposed of on the same lease where they are generated, and provided the person has the written permission of the surface owner of the tract where landfarming will occur: water base drilling fluids with a chloride concentration of 3,000 milligrams per liter (mg/liter) or less; drill cuttings, sands, and silts obtained while using water base drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site.]

[(D) Other drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by burial, provided the wastes are disposed of at the same well site where they are generated: water base drilling fluid which had a chloride concentration in excess of 3,000 mg/liter but which have been dewatered; drill cuttings, sands, and silts obtained while using oil base drilling fluids or water base drilling fluids with a chloride concentration in excess of 3,000 mg/liter; and those drilling fluids and wastes allowed to be landfarmed without a permit.]

[(E) Completion/workover pit wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a completion/workover pit, provided the wastes have been dewatered, and provided the wastes are disposed of at the same well site where they are generated: spent completion fluids, workover fluids, and the materials cleaned out of the wellbore of a well being completed or worked over.]

[(F) Contents of non-commercial fluid recycling pit. A person may, without a permit, dispose of the solids from a non-commercial fluid recycling pit by burial in the pit, provided the pit has been dewatered.]

[(G) Effect on backfilling. A person's choice to dispose of a waste by methods authorized by this paragraph shall not extend the time allowed for backfilling any reserve pit, mud circulation pit, or completion/workover pit whose use or maintenance is authorized by paragraph (4) of this subsection.]

[(4) Authorized pits. A person may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, basic sediment pits, flare pits, fresh makeup water pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits on the following conditions.]

[(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes, other than the following:]

[(i) drilling fluids, whether fresh water base, saltwater base, or oil base;]

[(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;]

[(iii) wash water used for cleaning drill pipe and other equipment at the well site;]

[(iv) drill stem test fluids; and]

[(v) blowout preventer test fluids.]

[(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.]

[(C) Basic sediment pits. A person shall not deposit or cause to be deposited into a basic sediment pit any oil field fluids or oil and gas wastes other than basic sediment removed from a production vessel or from the bottom of an oil storage tank. Although a person may store basic sediment in a basic sediment pit, a person may not deposit oil or free saltwater in the pit. The total capacity of a basic sediment pit shall not exceed a capacity of 50 barrels. The area covered by a basic sediment pit shall not exceed 250 square feet.]

[(D) Flare pits. A person shall not deposit or cause to be deposited into a flare pit any oil field fluids or oil and gas wastes other than the hydrocarbons designed to go to the flare during upset conditions at the well, tank battery, or gas plant where the pit is located. A person shall not store liquid hydrocarbons in a flare pit for more than 48 hours at a time.]

[(E) Fresh makeup water pits and fresh mining water pits. A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than fresh water used to make up drilling fluid or hydraulic fracturing fluid. A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.]

[(F) Water condensate pits. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids

or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.]

[(G) Non-commercial fluid recycling pits.]

[(i) A person shall not deposit or cause to be deposited into a non-commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those fluids described in subsection (a)(42) of this section.]

[(ii) All pits shall be sufficiently large to ensure adequate storage capacity and freeboard taking into account anticipated precipitation.]

[(iii) All pits shall be designed to prevent stormwater runoff from entering the pit. If a pit is constructed with a dike or berm, the height, slope, and construction material of such dike or berm shall be such that it is structurally sound and does not allow seepage.]

[(iv) A freeboard of at least two feet shall be maintained at all times.]

[(v) All pits shall be lined. The liner shall be designed, constructed, and installed to prevent any migration of materials from the pit into adjacent subsurface soils, ground water, or surface water at any time during the life of the pit. The liner shall be installed according to standard industry practices, shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the pit. All liners shall have a hydraulic conductivity that is 1.0 x 10-7 cm/sec or less. A liner may be constructed of either natural or synthetic materials.]

[(I) Procedures shall be in place to routinely monitor the integrity of the liner of pit. If liner failure is discovered at any time, the pit shall be emptied and the liner repaired prior to placing the pit back in service. Acceptable monitoring procedures include an annual visual inspection of the pit liner or the installation of a double liner and leak detection system. Alternative monitoring procedures may be approved by the director if the operator demonstrates that the alternative is at least equivalent in the protection of surface and subsurface water as the provisions of this section.]

[(II) The liner of a pit with a single liner shall be inspected annually to ensure that the liner has not failed. This inspection shall be completed by emptying the pit and visually inspecting the liner.]

[(III) If the operator does not propose to empty the pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system must be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.]

[(IV) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to commission personnel upon request.]

[(vi) The operator of the pit shall provide written notification to the district director prior to construction of the pit, or prior to the use of an existing pit as a non-commercial fluid recycling pit. Such notification shall include:]

[(I) the location of the pit including the lease name and number or drilling permit number and the latitude and longitude;]

[(II) the dimensions and maximum capacity of the pit; and]

[(III) a signed statement that the operator has written permission from the surface owner of the tract upon which the pit is located for construction and use of the pit for such purpose.]

[(vii) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.]

[(viii) The pit shall be inspected periodically by the operator for compliance with the applicable provisions of this section.]

[(H) Backfill requirements.]

[(i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.]

[(I) Reserve pits and mud circulation pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of drilling operations.]

[(II) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.]

[(III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations.]

[(IV) Basic sediment pits, flare pits, fresh mining water pits, non-commercial fluid recycling pits, and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pits.]

[(V) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section should be dewatered.]

[(ii) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, non-commercial fluid recycling pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by clause (i) of this subparagraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.]

[(iii) The director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit backfill the pit sooner than the time prescribed by clause (i) of this subparagraph if the director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.]

[(iv) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, basic sediment pit, flare pit, non-commercial fluid recycling pit, or water condensate pit whose use or maintenance is authorized by this paragraph, the person maintaining or

using the pit shall, in a permitted manner or in a manner authorized by paragraph (3) of this subsection, dispose of all oil and gas wastes which are in the pit.]

[(I) Unless otherwise approved by the district director after a showing that the fluids will be confined in the pit at all times, all authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in subsection (a) of this section. The operator may request a hearing if the district director denies approval of the request to construct a pit within a 100-year flood plain.]

[(II) In the event of an unauthorized discharge from any pit authorized by this paragraph, the operator shall take any measures necessary to stop or control the discharge and report the discharge to the district office as soon as possible.]

[(5) Responsibility for disposal.]

[(A) Permit required. No generator or receiver may knowingly utilize the services of a carrier to transport oil and gas wastes if the carrier is required by this rule to have a permit to transport such wastes but does not have such a permit. No carrier may knowingly utilize the services of a second carrier to transport oil and gas wastes if the second carrier is required by this rule to have a permit to transport such wastes but does not have such a permit. No generator or carrier may knowingly utilize the services of a receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit. No receiver may knowingly utilize the services of a second receiver to store, handle, treat, reclaim, or dispose of oil and gas wastes if the second receiver is required by statute or commission rule to have a permit to store, handle, treat, reclaim, or dispose of such wastes but does not have such a permit. Any person who plans to utilize the services of a carrier or receiver is under a duty to determine that the carrier or receiver has all permits required by the Oil and Gas Division to transport, store, handle, treat, reclaim, or dispose of oil and gas wastes.]

[(B) Improper disposal prohibited. No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:]

[(i) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and]

[(ii) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.]

[(6) Permits.]

[(A) Standards for permit issuance. A permit to maintain or use a pit for storage of oil field fluids or oil and gas wastes may only be issued if the commission determines that the maintenance or use of such pit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface waters. A permit to dispose of oil and gas wastes by any method, including disposal into a pit, may only be issued if the commission determines that the disposal will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water. A permit to maintain or use any unlined brine mining pit or any unlined pit, other than an emergency saltwater storage pit, for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters may only be issued if the commission determines that the applicant has conclusively shown that use of the pit cannot cause pollution of surrounding productive agricultural land nor pollution of surface or subsurface water, either because there is no surface or subsurface water in the area of the pit, or because the surface or subsurface water in the area of the pit would be physically isolated by naturally occurring impervious barriers from any oil and gas wastes which might escape or migrate from the pit. Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the waste of oil, gas, or geothermal resources and the pollution of surface and subsurface waters. A permit to maintain or use a pit will state the conditions under which the pit may be operated, including the conditions under which the permittee shall be required to dewater, backfill, and compact the pit. Any permits issued pursuant to this paragraph may contain requirements concerning the design and construction of pits and disposal facilities, including requirements relating to pit construction materials, dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to maintain or use any lined brine mining pit or any lined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters will contain requirements relating to liner material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing liners.]

[(B) Application. An application for a permit to maintain or use a pit or to dispose of oil and gas wastes shall be filed with the commission in Austin. The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the original application is mailed or delivered to the commission in Austin. A permit application shall be considered filed with the commission on the date it is received by the commission in Austin. When a commission-prescribed application form exists, an applicant shall make application on the prescribed form according to the instructions on such form. The director may require the applicant to provide the commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water.]

[(C) Notice. The applicant shall give notice of the permit application to the surface owners of the tract upon which the pit will be located or upon which the disposal will take place. When the tract upon which the pit will be located or upon which the disposal will take place lies within the corporate limits of an incorporated city, town, or village, the applicant shall also give notice to the city clerk or other appropriate official. Where disposal is to be by discharge into a watercourse other than the Gulf of Mexico or a bay, the applicant shall also give notice to the surface owners of each waterfront tract between the discharge point and 1/2 mile downstream of the discharge point except for those waterfront tracts within the corporate limits of an incorporated city, town, or village. When one or more waterfront tracts within 1/2 mile of the discharge point lie within the corporate limits of an incorporated city, town, or village, the applicant shall give notice to the city clerk or other appropriate official. Notice of the permit application shall consist of a copy of the application together with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission. The applicant shall mail or deliver the required notice to the surface owners and the city clerk or other appropriate official on or before the date the application is mailed or delivered to the commission in Austin. If, in connection with a particular application, the director determines that another class of persons, such as offset operators, adjacent surface owners, or an appropriate river authority, should receive notice of the application, the director may require the applicant to mail or deliver notice to members of that class. If the director determines

that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more persons required by this subparagraph to be notified, then the director may authorize the applicant to notify such persons by publishing notice of the application. The director shall determine the form of the notice to be published. The notice shall be published once each week for two consecutive weeks by the applicant in a newspaper of general circulation in the county where the pit will be located or the disposal will take place. The applicant shall file proof of publication with the commission in Austin. The director will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required by this subparagraph to be notified if the applicant has examined the current county tax rolls and investigated other reliable and readily available sources of information.]

[(D) Protests and hearings. If a protest from an affected person is made to the commission within 15 days of the date the application is filed, then a hearing shall be held on the application after the applicant requests a hearing. If the director has reason to believe that a person entitled to notice of an application has not received such notice within 15 days of the date an application is filed with the commission, then the director shall not take action on the application until reasonable efforts have been made to give such person notice of the application and an opportunity to file a protest to the application. If the director determines that a hearing is in the public interest, a hearing shall be held. A hearing on an application shall be held after the commission provides notice of hearing to all affected persons, or other persons or governmental entities who express an interest in the application in writing. If no protest from an affected person is received by the commission, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the hearings examiner shall recommend a final action by the commission.]

[(E) Modification, suspension, and termination. A permit granted pursuant to this subsection, may be modified, suspended, or terminated by the commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:]

[(i) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;]

[(ii) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;]

[(iii) the permittee has violated the terms and conditions of the permit or commission rules;]

[(iv) the permittee misrepresented any material fact during the permit issuance process;]

[(v) the permittee failed to give the notice required by the commission during the permit issuance process;]

[(vi) a material change of conditions has occurred in the permitted operations, or the information provided in the application has changed materially.]

[(F) Emergency permits. If the director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the director may issue an emergency permit. An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the commission in the appropriate district office. Notice of the application is not required. If warranted by the nature of the emergency, the director may issue an emergency permit based upon a verbal application, or the director may verbally authorize an activity before issuing a written permit authorizing that activity. An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of an emergency permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.]

[(G) Minor permits. If the director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water. An application for a minor permit shall be filed with the commission in the appropriate district office. Notice of the application shall be given as required by the director. The director may determine that notice of the application is not required. A minor permit is valid for 60 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the director at any time for good cause without notice and opportunity for hearing. Except when the provisions of this subparagraph are to the contrary, the issuance, denial, modification, suspension, or termination of a minor permit shall be governed by the provisions of subparagraphs (A) - (E) of this paragraph.]

[(7) Recycling.]

[(A) Prohibited recycling. Except for those recycling methods authorized for certain wastes by subparagraph (B) of this paragraph, no person may recycle any oil and gas wastes by any method without obtaining a permit.]

[(B) Authorized recycling.]

[(i) No permit is required if treated fluid is recycled for use as makeup water for a hydraulic fracturing fluid treatment(s), or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well.]

[(ii) Treated fluid may be reused in any other manner, other than discharge to waters of the state, without a permit from the Commission, provided the reuse occurs pursuant to a permit issued by another state or federal agency.]

[(iii) If treatment of the fluid results in distilled water, no permit is required to use the resulting distilled water in any manner other than discharge to waters of the state.]

[(iv) Fluid that meets the requirements of clause (i), (ii), or (iii) of this subparagraph is a recyclable product.]

[(C) Permitted recycling.]

[(i) Treated fluid may be reused in any manner, other than the manner authorized by subparagraph (B) of this paragraph, pursuant to a permit issued by the director on a case-by-case basis, taking into account the source of the fluids, the anticipated constituents of concern, the volume of fluids, the location, and the proposed reuse of the treated fluids. Fluid that meets the requirements of a permit issued under this clause is a recyclable product.]

[(ii) All commercial recycling requires the commercial recycler of the oil and gas waste to obtain a permit in accordance with Chapter 4, Subchapter B of this title (relating to Commercial Recycling).]

[(8) Used oil. Used oil as defined in §3.98 of this title, shall be managed in accordance with the provisions of 40 CFR, Part 279.]

[(e) Pollution prevention (reference Order Number 20-59,200, effective May 1, 1969).]

[(1) The operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage the aquatic life therein.]

[(2) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. Particularly, the following procedures shall be utilized to prevent pollution.]

[(A) The disposal of liquid waste material into the Texas offshore and adjacent estuarine zones shall be limited to saltwater and other materials which have been treated, when necessary, for the removal of constituents which may be harmful to aquatic life or injurious to life or property.]

[(B) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.]

[(C) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.]

[(D) Solid combustible waste may be burned and the ashes may be disposed of into Texas offshore and adjacent estuarine zones. Solid wastes such as cans, bottles, or any form of trash must be transported to shore in appropriate containers. Edible garbage, which may be consumed by aquatic life without harm, may be disposed of into Texas offshore and adjacent estuarine zones.]

[(E) Drilling muds which contain oil shall be transported to shore or a designated area for disposal. Only oil-free cutting and fluids from mud systems may be disposed of into Texas offshore and adjacent estuarine zones at or near the surface.]

[(F) Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent emission of pollutants to the Texas offshore and adjacent estuarine zones prior to proper treatment.]

[(G) All deck areas on producing platforms subject to contamination shall be either curbed and connected by drain to a collecting tank or sump in which the containment will be treated and disposed of without causing hazard or pollution, or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans must be piped to collecting tanks or sumps designed to accommodate all reasonably expected drainage. Satisfactory means must be provided to empty the sumps to prevent overflow.]

[(H) Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action or notification shall be made to eliminate further pollution. The operator shall then transmit the report to the appropriate commission district office.]

[(I) Immediate corrective action shall be taken in all cases where pollution has occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shoreline where it is found. Such removal operations will be at the expense of the responsible operator.]

[(3) The commission may suspend producing and/or drilling operations from any facility when it appears that the provisions of this rule are being violated.]

[(4) (Reference Order Number 20-60,214, effective October 1, 1970.) The foregoing provisions of Rule 8(D) shall also be required and enforced as to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.]

[(f) Oil and gas waste haulers.]

[(1) A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USCA §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title is excluded from this subsection. This subsection is not applicable to the non-commercial hauling of oil and gas wastes for non-commercial recycling. For purposes of this subsection, injection of salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as recycling.]

[(A) Application for an oil and gas waste hauler permit will be made on the commission-prescribed form, and in accordance with the instructions thereon, and must be accompanied by:]

[(i) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements) (Statewide Rule 78);]

[(ii) vehicle identification information to support commission issuance of an approved vehicle list;]

[(iii) an affidavit from the operator of each commission-permitted disposal system the hauler intends to use stating that the hauler has permission to use the system; and]

[(iv) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.]

[(B) An oil and gas waste hauler permit may be issued for a term not to exceed one year, subject to renewal by the filing of an application for permit renewal and the required application fee for the next permit period. The term of an oil and gas waste hauler permit will be established in accordance with a schedule prescribed by the director to allow for the orderly and timely renewal of oil and gas waste hauler permits on a staggered basis.]

[(C) Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit which provide:]

[(i) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.]

[(ii) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. (For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.)]

[(iii) Each vehicle must carry a copy of the permit including those parts of the commission-issued attachments listing approved vehicles and commission-permitted disposal systems that are relevant to that vehicle's activities. This permit authority is limited to those vehicles shown on the commission-issued list of approved vehicles.]

[(iv) This permit is issued pursuant to the information furnished on the application form, and any change in conditions must be reported to the commission on an amended application form. The permit authority will be revised as required by the amended application.]

[(v) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.]

[(vi) This permit authorizes the permittee to use commission-permitted disposal systems for which the permittee has submitted affidavits from the disposal system operators stating that the permittee has permission to use the systems. These disposal systems are listed as an attachment to the permit. This permit also authorizes the permittee to use a disposal system operated under authority of a minor permit issued by the commission without submitting an affidavit from the disposal system operator. In addition, this permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title, provided the shipment is accompanied by a manifest. Finally, this permit authorizes the transportation of oil and gas waste to a disposal facility permitted by another agency or another state provided the commission has granted separate authorization for the disposal.]

[(vii) The permittee must file an application for a renewal permit, using the permittee's assigned permit number, before the expiration date specified in this permit.]

[(viii) The permittee must compile and keep current a list of all persons by whom the permittee is hired to haul and dispose of oil and gas waste, and furnish such list to the commission upon request.]

[(ix) Each vehicle must be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation. Vehicles used to haul non-solid oil and gas waste shall be designed to transport non-solid oil and gas wastes, and shall be operated and maintained to prevent the escape of oil and gas waste.]

[(x) Each vehicle must be made available for inspection upon request by commission personnel.]

[(2) A record shall be kept by each oil and gas waste hauler showing daily oil and gas waste hauling operations under the permitted authority.]

[(A) Such daily record shall be dated and signed by the vehicle driver and shall show the following information:]

[(i) identity of the property from which the oil and gas waste is hauled;]

[(ii) identity of the disposal system or commercial recycling facility to which the oil and gas waste is delivered;]

[(iii) the type and volume of oil and gas waste received by the hauler at the property where it was generated; and]

[(iv) the type and volume of oil and gas waste transported and delivered by the hauler to the disposal system or commercial recycling facility.]

[(B) Such record shall be kept open for the inspection of the commission or its representatives.]

[(C) Such record shall be kept on file for a period of three years from the date of operation and recordation.]

[(g) Recordkeeping.]

[(1) Oil and gas waste. When oil and gas waste is hauled by vehicle from the lease, unit, or other oil or gas property where it is generated to an off-lease disposal or recycling facility, the person generating the oil and gas waste shall keep, for a period of three years from the date of generation, the following records:]

[(A) identity of the property from which the oil and gas waste is hauled;]

[(B) identity of the disposal system or recycling facility to which the oil and gas waste is delivered;]

[(C) name and address of the hauler, and permit number (WHP number) if applicable; and]

[(D) type and volume of oil and gas waste transported each day to disposal or recycling.]

[(2) Retention of run tickets. A person may comply with the requirements of paragraph (1) of this subsection by retaining run tickets or other billing information created by the oil and gas waste hauler, provided the run tickets or other billing information contain all the information required by paragraph (1) of this subsection.]

[(3) Examination and reporting. The person keeping any records required by this subsection shall make the records available for examination and copying by members and employees of the commission during reasonable working hours. Upon request of the commission, the person keeping the records shall file such records with the commission.]

[(h) Penalties. Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance) (Rule 73) or violation of this section.]

[(i) Coordination between the Railroad Commission of Texas and the Texas Commission on Environmental Quality or its successor agencies. The Railroad Commission and the Texas Commission on Environmental Quality both have adopted by rule a memorandum of understanding regarding the division of jurisdiction between the agencies over wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil. The memorandum of understanding is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).]

[(j) Consistency with the Texas Coastal Management Program. The provisions of this subsection apply only to activities that occur in the coastal zone and that are subject to the CMP rules.]

[(1) Specific Policies.]

[(A) Disposal of Oil and Gas Waste in Pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone:]

[(i) no commercial oil and gas waste disposal pit constructed after the effective date of this subsection shall be located in any CNRA; and]

[(ii) all oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.]

[(B) Discharge of Oil and Gas Waste to Surface Waters. The following provisions apply to discharges of oil and gas waste that occur in the coastal zone:]

[(i) no discharge of oil and gas waste to surface waters may cause a violation of the Texas Surface Water Quality Standards adopted by the Texas Commission on Environmental Quality or its successor agencies and codified at Title 30, Texas Administrative Code, Chapter 307;]

[(ii) in determining whether any permit to discharge oil and gas waste that is comprised, in whole or in part, of produced water is consistent with the goals and policies of the CMP, the commission shall consider the effects of salinity from the discharge;]

[(iii) to the greatest extent practicable, in the case of any oil and gas exploration, production, or development operation from which an oil and gas waste discharge commences after the effective date this subsection, the outfall for the discharge shall not be located where the discharge will adversely affect any critical area;]

[(iv) in the case of any oil and gas exploration, production, or development operation with an oil and gas waste discharge permitted prior to the effective date of this subsection that adversely affects any critical area, the outfall for the discharge shall either:]

[(I) be relocated within two years after the effective date of this subsection, so that, to the greatest extent practicable, the discharge does not adversely affect any critical area; or]

[(II) the discharge shall be discontinued; and]

[(v) the commission shall notify the Texas Commission on Environmental Quality or its successor agencies and the Texas Parks and Wildlife Department upon receipt of an application for a permit to discharge oil and gas waste that is comprised, in whole or in part, of produced waters to waters under tidal influence.]

[(C) Development in Critical Areas. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(h)(1)(A) - (G), have been satisfied. The commission shall coordinate its efforts under this subparagraph with those of other appropriate state and federal agencies.]

[(D) Dredging and Dredged Material Disposal and Placement. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(j), have been satisfied.]

[(2) Consistency Determinations. The provisions of this paragraph apply to issuance of determinations required under Title 31, Texas Administrative Code, §505.30 (Agency Consistency Determination), for the following actions listed in Title 31, Texas Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to discharge oil and gas wastes to surface waters; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.]

[(A) The commission shall issue consistency determinations under this paragraph as an element of the permitting process for permits to dispose of oil and gas waste in a pit and permits to discharge oil and gas waste to surface waters.]

[(B) Prior to issuance of a permit or certification covered by this paragraph, the commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to such activity.]

[(i) If the commission determines that issuance of a permit or a certification covered by this paragraph would not result in direct and significant adverse effects to any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action will not have a direct and significant adverse affect on any coastal natural resource area (CNRA) identified in the applicable policies."]

[(ii) If the commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse affects to a CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall determine whether the proposed activity would meet the applicable requirements of paragraph (1) of this subsection.]

[(I) If the commission determines that the proposed activity would meet the applicable requirements of paragraph (1) of this subsection, the commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."]

[(II) If the commission determines that the proposed activity would not meet the applicable requirements of paragraph (1) of this subsection, the commission shall not issue the permit or certification.]

[(3) Thresholds for Referral. Any commission action that is not identified in this paragraph shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to Title 31, Texas Administrative Code, §505.32 (Requirements for Referral of an Individual Agency Action), the thresholds for referral of consistency determinations issued by the commission are as follows:]

[(A) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;]

[(B) for discharges, any permit to discharge oil and gas waste consisting, in whole or in part, of produced waters into tidally

influenced waters at a rate equal to or greater than 100,000 gallons per day;]

[(C) for certification of federal permits for development in critical areas:]

[(i) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:]

[(I) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or]

[(II) five acres or more of any other critical area; and]

[(ii) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area;]

[(D) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.]

§3.14. Plugging.

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

(d) General plugging requirements.

(1) - (11) (No change.)

(12) The operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator shall remove all such tanks, vessels, and related piping, remove all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site. The operator shall close all pits in accordance with the provisions of Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8 of this title (relating to Water Protection (Statewide Rule 8))]. The district director or the director's delegate may grant a reasonable extension of time of not more than an additional 120 days for the removal of tanks, vessels and related piping.

(e) - (k) (No change.)

§3.22. Protection of Birds.

(a) (No change.)

(b) An operator must screen, net, cover, or otherwise render harmless to birds the following categories of open-top tanks and pits associated with the exploration, development, and production of oil and gas, including transportation of oil and gas by pipeline:

(1) open-top storage tanks that are eight feet or greater in diameter and contain a continuous or frequent surface film or accumulation of oil; however, temporary, portable storage tanks that are used to hold fluids during drilling operations, workovers, or well tests are exempt; and

(2) skimming pits or collecting pits that are used as skimming pits that are permitted under Chapter 4 of this title (relating to Environmental Protection), Subchapter A (relating to Oil and Gas Waste Management). [as defined in §3.8 of this title (relating to Water Protection) (Statewide Rule 8); and]

[(3) collecting pits as defined in §3.8 of this title (relating to Water Protection) that are used as skimming pits.]

(c) If the commission finds a surface film or accumulation of oil in any other pit regulated under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8 of this title (relating to Water Protection)], the commission will instruct the operator to remove the oil. If the operator fails to remove the oil from the pit in accordance with the commission's instructions or if the commission finds a surface film or accumulation of oil in the pit again within a 12-month period, the commission will require the operator to screen, net, cover, or otherwise render the pit harmless to birds. Before complying with this requirement, the operator will have a right to a hearing upon request. In addition to the enforcement actions specified by this subsection, the commission may take any other appropriate enforcement actions within its authority.

§3.30. Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ).

(a) (No change.)

(b) General agency jurisdictions.

(1) (No change.)

(2) Railroad Commission of Texas (RRC).

(A) Oil and gas waste.

(i) Under Texas Natural Resources Code, Title 3, and Texas Water Code, Chapter 26, wastes (both hazardous and nonhazardous) resulting from activities associated with the exploration, development, or production of oil or gas or geothermal resources, including storage, handling, reclamation, gathering, transportation, or distribution of crude oil or natural gas by pipeline, prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel, are under the jurisdiction of the RRC, except as noted in clause (ii) of this subparagraph. These wastes are termed "oil and gas wastes." In compliance with Texas Health and Safety Code, §361.025 (relating to exempt activities), a list of activities that generate wastes that are subject to the jurisdiction of the RRC is found in §4.110 of this title (relating to Definitions) [at §3.8(a)(30) of this title (relating to Water Protection)] and at 30 TAC §335.1 (relating to Definitions), which contains a definition of "activities associated with the exploration, development, and production of oil or gas or geothermal resources." Under Texas Health and Safety Code, §401.415, the RRC has jurisdiction over the disposal of oil and gas naturally occurring radioactive material (NORM) waste that constitutes, is contained in, or has contaminated oil and gas waste.

(ii) (No change.)

(B) Water quality.

(i) (No change.)

(ii) Storm water. When required by federal law, authorization for storm water discharges that are under the jurisdiction of the RRC must be obtained through application for a National Pollutant Discharge Elimination System (NPDES) permit with the EPA and authorization from the RRC, as applicable.

(I) Storm water associated with industrial activities. Where required by federal law, discharges of storm water associated with facilities and activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished

product, byproduct, or waste product located on the site of the facility. Under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8 of this title (relating to Water Protection)], the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain Best Management Practices (BMPs) to minimize discharges of pollutants, including sediment, in storm water to help ensure protection of surface water quality during storm events.

(II) Storm water associated with construction activities. Where required by federal law, discharges of storm water associated with construction activities under the RRC's jurisdiction must be authorized by the EPA and the RRC, as applicable. Activities under RRC jurisdiction include construction of a facility that, when completed, would be associated with the exploration, development, or production of oil or gas or geothermal resources, such as a well site; treatment or storage facility; underground hydrocarbon or natural gas storage facility; reclamation plant; gas processing facility; compressor station; terminal facility where crude oil is stored prior to refining and at which refined products are stored solely for use at the facility; a carbon dioxide geologic storage facility under the jurisdiction of the RRC; and a gathering, transmission, or distribution pipeline that will transport crude oil or natural gas, including natural gas liquids, prior to refining of such oil or the use of the natural gas in any manufacturing process or as a residential or industrial fuel. The RRC also has jurisdiction over storm water from land disturbance associated with a site survey that is conducted prior to construction of a facility that would be regulated by the RRC. Under 33 U.S.C. §1342(l)(2) and §1362(24), EPA cannot require a permit for discharges of storm water from "field activities or operations associated with {oil and gas} exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities" unless the discharge is contaminated by contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the facility. Under Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8 of this title (relating to Water Protection)], the RRC prohibits operators from causing or allowing pollution of surface or subsurface water. Operators are encouraged to implement and maintain BMPs to minimize discharges of pollutants, including sediment, in storm water during construction activities to help ensure protection of surface water quality during storm events.

(III) - (IV) (No change.)

(iii) (No change.)

(C) (No change.)

(c) (No change.)

(d) Jurisdiction over waste from specific activities.

(1) - (10) (No change.)

(11) Commercial service company facilities and training facilities.

(A) - (D) (No change.)

(E) The RRC also has jurisdiction over wastes such as vacuum truck rinsate and tank rinsate generated at facilities operated by oil and gas waste haulers permitted by the RRC pursuant to Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8(f) of this title (relating to Water Protection)].

(12) (No change.)

(e) - (g) (No change.)

§3.57. Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials.

Effective July 1, 2025, the requirements of this section are incorporated in Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management).

[(a) Applicability. This section is applicable to reclamation of tank bottoms and other hydrocarbon wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §3.8(a)(30) of this title (relating to Water Protection). The provisions of this section shall not apply where tank bottoms or other hydrocarbon-bearing materials are recycled or processed on-site by the owner/custodian and are returned to a tank or vessel at the same lease or facility. This section is not applicable to the practice of recycling or reusing drilling mud, except as to those hydrocarbons recovered from such mud recycling and sent to a permitted reclamation plant.]

[(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Tank bottoms--A mixture of crude oil or lease condensate, water, and other substances that is concentrated at the bottom of producing lease tanks and pipeline storage tanks (commonly referred to as basic sediment and water or BS&W).]

[(2) Other hydrocarbon wastes--Oily waste materials, other than tank bottoms, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in §3.8(a)(30) of this title (relating to Water Protection). The term "other hydrocarbon wastes" includes, but is not limited to, pit hydrocarbons, skim oil, spillage, and leakage of crude oil or condensate from producing lease or pipeline storage tanks, and crude oil or condensate associated with pipeline ruptures and other spills.]

[(3) Authorized person--A tank bottoms cleaner or transporter that is under contract for disposition of untreated tank bottoms or other hydrocarbon wastes to a person who has obtained a permit to operate a reclamation plant.]

[(4) Affected person--A person who has suffered or will suffer actual injury or economic damage other than as a member of the general public and includes surface owners of property on which a reclamation plant is located and surface owners of adjoining properties.]

[(5) Director--The director of the Oil and Gas Division or a staff delegate designated in writing by the director of the Oil and Gas Division or the commission.]

[(c) Permitting process.]

[(1) Removal of tank bottoms or other hydrocarbon wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant, or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the commission in Austin.]

[(2) The applicant shall give notice by mailing or delivering a copy of the application to the county clerk of the county where

the reclamation plant is to be located, and to the city clerk or other appropriate city official of any city where the reclamation plant is located within the corporate limits of the city, on or before the date the application is mailed to or filed with the commission.]

[(3) In order to give notice to other local governments and interested or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the reclamation plant is to be located, in a form approved by the commission. Publication shall occur on or before the date the application is mailed to or filed with the commission. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.]

[(4) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, or if the commission determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons who express an interest in writing in the application.]

[(5) If no protest from an affected person or local government is received by the commission within the allotted time, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.]

[(6) Applicants must demonstrate they are familiar with commission rules and have the proper facilities to comply with the rules.]

[(7) Except as provided in subparagraphs (A) and (B) of this paragraph, a permit to operate a reclamation plant shall remain in effect until canceled at the request of the operator. Existing permits subject to annual renewal may be renewed so as to remain in effect until canceled. Such renewal shall be subject to the requirements of paragraph (10) of this subsection. A reclamation plant permit may be canceled by the commission after notice and opportunity for hearing, if:]

[(A) the permitted facility has been inactive for 12 months; or]

[(B) there has been a violation, or a violation is threatened, of any provision of the permit, the conservation laws of the state, or rules or orders of the commission.]

[(8) If the operator objects to the cancellation, the operator must file, within 15 days of the date shown on the notice, a written objection and request for a hearing to determine whether the permit should be canceled. If such written request is timely filed, the cancellation will be suspended until a final order is issued pursuant to the hearing. If such request is not received within the required time period, the permit will be canceled. In the event of an emergency which presents an imminent pollution, waste, or public safety threat, the commission may suspend the permit until an order is issued pursuant to the hearing.]

[(9) A permit to operate a reclamation plant is not transferable. A new permit must be obtained by the new operator.]

[(10) Reclamation plants permitted under this section shall file financial security as required under §3.78(l) of this title (relating to Fees and Financial Security Requirements).]

[(d) Operation of a reclamation plant.]

[(1) The following provisions apply to any removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility.]

[(A) Notwithstanding the provisions of §3.85(a)(8) of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), an operator of a reclamation plant or an authorized person shall execute a manifest in accordance with §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), upon each removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the information required pursuant to §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle), the operator of the reclamation plant or other authorized person shall also include on the manifest:]

[(i) the commission identification number of the lease or facility from which the material is removed; and]

[(ii) the gross and net volume of the material as determined by the required shakeout test.]

[(B) The operator of the reclamation plant or other authorized person shall fill out the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed, and shall retain a copy on file for two years.]

[(C) The operator of the reclamation plant or other authorized person shall leave a copy of the manifest in the vehicle transporting the material.]

[(2) The operator of a reclamation plant or other authorized person shall conduct a shakeout (centrifuge) test on all tank bottoms or other hydrocarbon wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility, to determine the crude oil content and lease condensate thereof.]

[(3) The shakeout test shall be conducted in accordance with the most current American Petroleum Institute or American Society for Testing Materials method.]

[(e) Reporting of reclaimed crude oil or lease condensate on commission required report.]

[(1) For wastes taken to a reclamation plant the following provisions shall apply.]

[(A) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.]

[(B) For other hydrocarbon wastes, the net crude oil content or lease condensate of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.]

[(2) The net crude oil content or lease condensate of any tank bottoms or other hydrocarbon wastes removed from an active facility, including a pipeline facility, and disposed of on-site or delivered to a site other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection; Disposal Wells; and Fluid Injection into Productive Reservoirs). Operators may be required to obtain a minor permit for such disposal using procedures set out in §3.8(d) and (g) of this title (relating to Wa-

ter Protection). Prior to approval of the minor permit, the commission may require an analysis of the disposable material to be performed.]

[(f) General provisions applicable to materials taken to a reclamation plant.]

[(1) The removal of tank bottoms or other hydrocarbon wastes from any facility for which monthly reports are not filed with the commission must be authorized in writing by the commission prior to such removal. A written request for such authorization must be sent to the commission office in Austin, and must detail the location, description, estimated volume, and specific origin of the material to be removed, as well as the name of the reclaimer and intended destination of the material. If the authorization is denied, the applicant may request a hearing.]

[(2) The receipt of any tank bottoms or other hydrocarbon wastes from outside the State of Texas must be authorized in writing by the commission prior to such receipt. However, written approval is not required if another entity will indicate, in the appropriate monthly report, a corresponding delivery of the same material. If the request is denied, the applicant may request a hearing.]

[(3) The receipt of any waste materials other than tank bottoms or other hydrocarbon wastes must be authorized in writing by the commission prior to such receipt. The commission may require the reclamation plant operator to submit an analysis of such waste materials prior to a determination of whether to authorize such receipt. If the request is denied, the applicant may request a hearing.]

[(4) The operator of a reclamation plant shall file a report on the appropriate commission form for each reclamation plant facility by the 15th day of each calendar month, covering the facility's activities for the previous month. The operator of a reclamation plant shall file a copy of the monthly report in the district office of any district in which the operator made receipts or deliveries for the month covered by the report.]

[(5) All wastes generated by reclaiming operations shall be disposed of in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection; Disposal Wells; and Fluid Injection into Productive Reservoirs). No person conducting activities subject to regulation by the commission may cause or allow pollution of surface or subsurface water in the state.]

[(g) Commission review of administrative actions. Administrative actions performed by the director or commission staff pursuant to this rule are subject to review by the commissioners.]

[(h) Policy. The provisions of this rule shall be administered so as to prevent waste and protect correlative rights.]

§3.91. Cleanup of Soil Contaminated by a Crude Oil Spill.

(a) (No change.)

(b) Scope. These cleanup standards and procedures apply to the cleanup of soil in non-sensitive areas contaminated by crude oil spills from activities associated with the exploration, development, and production, including transportation, of oil or gas or geothermal resources as defined in §4.110 of this title (relating to Definitions) [§3.8(a)(30) of this title (relating to Water Protection)]. For the purposes of this section, crude oil does not include hydrocarbon condensate. These standards and procedures do not apply to hydrocarbon condensate spills, crude oil spills in sensitive areas, or crude oil spills that occurred prior to the effective date of this section. Cleanup requirements for hydrocarbon condensate spills and crude oil spills in sensitive areas will be determined on a case-by-case basis. Cleanup requirements for crude oil contamination that occurred wholly or partially prior to the effective date of this section will also be determined on a case-by-case basis. Where cleanup requirements are to be determined on a case-by-case basis, the operator must consult with the appropriate district office on proper cleanup standards and methods, reporting requirements, or other special procedures.

(c) - (f) (No change.)

§3.98. Standards for Management of Hazardous Oil and Gas Waste.

(a) - (l) (No change.)

(m) Disposition of Hazardous Oil and Gas Waste.

(1) (No change.)

(2) Transport to Authorized Facility.

(A) Except as otherwise specifically provided in this section and subject to all other applicable requirements of state or federal law, a generator of hazardous oil and gas waste must send his or her waste to one of the following categories of facilities for treatment, storage, disposal, recycling, or reclamation:

(i) - (v) (No change.)

(vi) if the waste is generated by a CESQG, a centralized waste collection facility (CWCF) that meets the requirements of paragraph (3) of this subsection [(m)(3) of this section].

(B) - (C) (No change.)

(D) For purposes of Chapter 4 of this title (relating to Environmental Protection), specifically Subchapter A (relating to Oil and Gas Waste Management) [§3.8(f)(1)(C)(vi) of this title (relating to Water Protection)], the manifest for shipment of hazardous oil and gas waste to a designated facility (a facility designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section) shall be deemed commission authorization for disposal at a facility permitted by another agency or another state.

(3) (No change.)

(n) - (bb) (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 August 15, 2024.

TRD-202403738
Haley Cochran
Assistant General Counsel, Office of the General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 475-1295

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16 TAC §3.70

The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to Pipeline Permits Required, The Commission proposes the amendments in §3.70 to align with changes proposed concurrently in Chapter 8, relating to Pipeline Safety Regulations, which incorporate federal requirements. The proposed amendments to §3.70 also remove dates from the rule that no longer apply and incorporate a procedure related to the Form T-4B.

The Commission proposes amendments in §3.70(i)(1)(A) and (B) to incorporate federal categories of pipelines and to clarify reporting requirements. In the Commission's proposal to amend §8.1 of this title (relating to General Applicability and Standards),

which is proposed concurrently with these amendments to §3.70, the Commission proposes to incorporate minimum safety standards from the Pipeline and Hazardous Materials Safety Administration (PHSMA). PHMSA's standards extend reporting requirements to all gas gathering operators and apply a set of minimum safety requirements to certain gas gathering pipelines with large diameters and high operating pressures. The proposed amendments to §3.70(i) incorporate federal pipeline classifications and ensure gas gathering lines are regulated consistent with PHMSA's requirements.

The proposed amendments in subsection (i)(2) and (3) and subsection (j) remove dates that were included in the rule when the fees were first adopted.

The Commission proposes amendments in subsection (o) to clarify the procedure for filing Form T-4B when the transferee operator is unable to obtain the signature of the transferor operator. This situation is addressed in the oil and gas context in §3.58 of this title (relating to Certificate of Compliance and Transportation Authority; Operator Reports) and the related Single-Signature Form P-4 process. The Commission proposes a similar process in subsection (o) because this situation also occurs with pipeline transfers.

The Commission proposes new subsection (r) to require updates in the permitting system related to gas gathering pipelines, indicating the federal categories as proposed in subsection (i). The proposed amendments state that, beginning December 9, 2024, operators shall amend gas permits to include all gas gathering pipelines defined as Type A, Type B, Type C, or Type R in 49 CFR §192.8. The permit amendments shall be filed on the Commission's online permitting system by March 31, 2025. The Commission notes that the proposed dates of December 9, 2024, and March 31, 2025, are based on the expected rulemaking schedule and these dates may be adjusted upon adoption.

Ms. Stephanie Weidman, Pipeline Safety Director, Oversight and Safety Division, has determined that for each year of the first five years that the amendments will be in effect, there will be no additional cost to state government as a result of enforcing and administering the amendments as proposed. There is also no fiscal effect on local government. The Commission anticipates additional revenue from annual fees due to the proposed amendments as described in more detail below.

Ms. Weidman has determined that for each year of the first five years the proposed amendments are in effect the primary public benefit will be compliance with applicable federal law.

Ms. Weidman has determined that for each year of the first five years that the proposed amendments will be in effect, certain persons required to comply as a result of adoption of the proposed amendments will incur economic costs. For operators with Type C pipeline facilities, the annual fee per mile will change from $10 per mile to $20 per mile. For other operators, there will be no economic impact. Based on data gathered as of the end of calendar year 2023, the Commission estimates that approximately 39,500 miles of Type C gathering lines will be impacted by the fee increase. Therefore, the Commission will receive additional fee revenue of approximately $395,000. The fee increase for operators of Type C facilities is prompted by PHMSA's recent regulations for these facilities, which were formerly not regulated.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on rural communities, small businesses, and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities, small businesses, or micro-businesses. The proposed amendments will not have an adverse economic effect on rural communities, small businesses, or micro-businesses. Therefore, the regulatory flexibility analysis is not required.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the amendments would be in effect, the proposed amendments would not: create or eliminate a new government program or create a new regulation. The proposed amendments expand the Commission's existing regulations to certain types of pipeline facilities, consistent with federal requirements. The proposed amendments do not require an increase in future legislative appropriations and do not increase or decrease fees required to be paid to the Commission for most operators. As noted above, the proposed amendments increase fees from $10 per mile to $20 per mile for operators of Type C pipeline facilities. The proposed amendments do not require the creation of employee positions or the elimination of existing employee positions. Finally, the proposed amendments would not affect the state's economy. As discussed above, the proposed amendments incorporate federal pipeline categories, remove dates that no longer apply, and clarify the procedure for a single-signature T-4B.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, September 30, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Weidman at (512) 463-2519. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

Statutory Authority: The Commission proposes the amendments pursuant to Texas Natural Resources Code, §81.071, which authorizes the Commission to establish pipeline safety

and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Additionally, the Commission proposes the amendments pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission; Texas Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq. Texas Natural Resources Code §§81.051, 81.052, 86.041, 86.042, 111.131, and 111.132; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 86, and Chapter 111, and Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§3.70. Pipeline Permits Required.

(a) Each operator of a pipeline or gathering system, other than an operator excluded under §8.1(b)(4) of this title (relating to General Applicability and Standards), subject to the jurisdiction of the Commission, shall obtain a pipeline permit, to be renewed annually, from the Commission as provided in this rule. Production or flow lines that are subject to §8.1(a)(1)(B) and (D) [~~§8.1(a)(1)(B) and (a)(1)(D)~~] of this title must comply with this section. All other production or flow lines as defined in this subsection are exempt from complying with this section. A production or flow line is piping used for production operations that generally occur upstream of gathering or other pipeline facilities. For the purposes of this subsection, piping used in "production operations" means piping used for production and preparation for transportation or delivery of hydrocarbon gas and/or liquids, and includes the following processes:

(1) extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement; and

(2) associated production compression, gas lift, gas injection, or fuel gas supply.

(b) To obtain a new pipeline permit or to amend a permit because of a change of classification, an operator shall file an application for a pipeline permit on the Commission's online permitting system. The operator shall include or attach the following documentation and information:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation or maintenance;

(2) the requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line;

(3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline, including, if applicable, an attestation to the applicant's knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Office of the Attorney General of Texas; [~~and~~]

(4) documentation to provide support for the classification and purpose being sought for the pipeline, if applicable; and

(5) any other information requested by the Commission.

(c) To renew an existing permit, to amend an existing permit for any reason other than a change in classification, or to cancel an existing permit, an operator shall file an application for a pipeline permit on the Commission's online filing system. The operator shall include or attach:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation, or maintenance; change in operator or ownership; or other change including operator cessation of pipeline operation;

(2) a statement from the pipeline operator confirming the current classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line, if applicable; and

(3) any other information requested by the Commission.

(d) Upon receipt of a complete permit application, the Commission has 30 calendar days to issue, amend, or deny the pipeline permit as filed. If the Commission determines that the application is incomplete, the Commission shall promptly notify the applicant of the deficiencies and specify the additional information necessary to complete the application. Upon receipt of a revised application, the Commission has 30 calendar days to determine if the application is complete and issue, amend, or deny the pipeline permit as filed.

(e) If the Commission is satisfied from the application and the documentation and information provided in support thereof, and its own review, that the proposed line is[~~,~~] or will be laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted. The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline based upon the information and documentation submitted by the applicant and the Commission's review of the application.

(f) This rule applies to applications made for new pipeline permits and to amendments, renewals, and cancellations of existing pipeline permits. The classification of a pipeline under this rule applies to extensions, replacements, and relocations of that pipeline.

(g) The Commission may delegate the authority to administratively issue pipeline permits.

(h) The pipeline permit, if granted, shall be revocable at any time after a hearing, held after 10 days' notice, if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the Commission including if the permit is not renewed annually as required in subsection (a) of this section.

(i) Each pipeline operator shall pay an annual fee based on the pipeline operator's permitted mileage of pipeline not later than [~~by August 31, 2018, for the initial year that the requirement is in effect, and by~~] April 1 of [~~for~~] each [~~subsequent~~] year.

(1) For purposes of calculating the mileage fee, the Commission will categorize pipelines into two groups.

(A) Group A includes transmission and gathering pipelines that are required by Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 CFR Parts 192 and 195, such as natural gas transmission and storage pipelines, natural gas gathering pipelines defined as Type A, Type B, or Type C in 49 CFR §192.8, hazardous liquids transmission and storage pipelines, regulated rural [~~and~~] hazardous liquids gathering pipelines under 49 CFR §195.11, and hazardous liquid low-stress rural pipelines under 49 CFR §195.12.

(B) Group B includes pipelines that are required by Commission rules to have a valid T-4 permit to operate but are only subject to the reporting requirements [~~not subject to the regulations~~] in 49 CFR Parts 191 [~~192~~] and 195 such as Type R gathering pipelines as defined in 49 CFR §192.8, and reporting-regulated-only gathering lines as defined in 49 CFR §195.15. [~~Group B also includes gathering pipelines required to comply with §8.110 of this title (relating to Gathering Pipelines).~~]

(2) An operator of a Group A pipeline shall pay an annual fee of $20 per mile of pipeline based on the number of miles permitted to that operator as of [~~June 29, 2018, for the initial year that the requirement is in effect and as of~~] December 31 of [~~for~~] each [~~subsequent~~] year.

(3) An operator of a Group B pipeline shall pay an annual fee of $10 per mile of pipeline based on the number of miles permitted to that operator as of [~~June 29, 2018, for the initial year that the requirement is in effect and as of~~] December 31 of [~~for~~] each [~~subsequent~~] year.

(4) Any pipeline distance that is a fraction of a mile will be considered as one mile and will be assessed a $20 or $10 fee, as appropriate.

(5) Fees due to the Commission for mileage transferred from one operator to another operator pursuant to subsection (o) of this section will be captured in the next mileage fee to be calculated on the following December 31 and paid by the new operator.

(j) Each [~~Beginning October 1, 2018, each~~] pipeline operator shall pay a $500 permit processing fee for each new permit application and permit renewal.

[~~(1) From October 1, 2018, to August 31, 2020, the permit renewal date for a pipeline operator who has an existing, valid permit in the Commission's online filing system will be the date shown in the online filing system on June 29, 2018, when the pipeline mileage is calculated for purposes of paying the mileage fee. A permit renewal date will not be affected or changed by an operator requesting or receiving a permit amendment.~~]

[~~(2)~~] Each operator [~~Beginning September 1, 2020, operators~~] shall file the [~~their~~] annual renewals as follows:

(1) [~~(A)~~] Companies with names beginning with letters A through C shall file in February;

(2) [~~(B)~~] Companies with names beginning with letters D through E shall file in March;

(3) [~~(C)~~] Companies with names beginning with letters F through L shall file in April;

(4) [~~(D)~~] Companies with names beginning with letters M through P shall file in May;

(5) [~~(E)~~] Companies with names beginning with letters Q through T shall file in June; and

(6) [~~(F)~~] Companies with names beginning with letters U through Z and companies with names beginning with numerical values or other symbols shall file in July.

(k) Each operator [~~Beginning September 1, 2020, operators~~] shall comply with the following:

(1) If a permit is transferred, in the Commission fiscal year of the transfer the acquiring operator shall renew that permit in its designated month pursuant to subsection (j) [~~(j)(2)~~] of this section. If the acquiring operator receives a transferred permit in a Commission fiscal year and its renewal month has already passed, the acquiring operator shall pay the renewal fee upon transfer.

(2) If an operator adds a new permit and pays the new permit fee, the operator is not required to pay the renewal fee for that permit in the same Commission fiscal year.

(3) If an operator adds a new permit after its renewal month has passed, the new permit shall be renewed the following Commission fiscal year in the operator's designated month pursuant to subsection (j) [~~(j)(2)~~] of this section.

(l) A pipeline operator who fails to renew a permit on or before the renewal deadline which is the last day of the operator's required filing month as specified in subsection (j) of this section shall pay a late-filing fee as follows:

(1) $250, if the renewal application is received within 30 calendar days after the renewal deadline date;

(2) $500, if the renewal application is received more than 30 calendar days and no more than 60 calendar days after the renewal deadline date; and

(3) $700, if the renewal application is received more than 60 calendar days after the renewal deadline date.

(4) If the renewal application is not received within 90 calendar days of the renewal deadline date, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(m) A pipeline operator with a total mileage of 50 miles or less of pipeline who fails to pay the annual mileage fee as specified in subsection (i) of this section shall pay a late-filing fee as follows:

(1) $125, if the fee is received within 30 calendar days of April 1;

(2) $250, if the fee is received more than 30 calendar days and no more than 60 calendar days after April 1; and

(3) $350, if the fee is received more than 60 calendar days after April 1.

(4) If the fee is not received within 90 calendar days of April 1, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(n) A pipeline operator with a total mileage of more than 50 miles of pipeline who fails to pay the annual mileage fee shall pay a late-filing fee as follows:

(1) $250, if the fee is received within 30 calendar days of August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year;

(2) $500, if the fee is received more than 30 calendar days and no more than 60 calendar days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year; and

(3) $700, if the fee is received more than 60 calendar days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year.

(4) If the fee is not received within 90 calendar days of August 31 for the initial year that the requirement is in effect or April 1 for each subsequent year, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(o) A pipeline operator who has been issued a permit and is transferring the pipeline or a portion of the pipeline included on the permit to another operator shall file a notification of transfer with the Commission within 30 days following the transfer. The transferee and transferor operators [~~An operator~~] shall [~~may~~] file a fully executed Form T-4B as a notification of transfer. The Commission may use a fully executed Form T-4B to remove the pipeline that is the subject of the transfer from the transferor operator and assign the mileage to the transferee operator for calculation of the annual mileage fee. The transferee operator [~~to which the pipeline has been transferred~~] shall amend its permit to include the pipeline or portion of the pipeline within 30 days following the Commission's approval of the transfer or the operator may be subject to a penalty for operating without a permit pursuant to subsection (p) of this section.

(1) A transferee operator may file a Form T-4B signed only by the transferee operator as a notification of transfer with the Commission only upon presenting to the Commission for its review, concurrently with Form T-4B:

(A) evidence that the transferee operator made a good faith effort to procure the transferor operator's signature; and

(B) documentation establishing that the transferee operator has a legal right to operate the pipeline.

(2) Prior to approving a single-signature Form T-4B filed pursuant to paragraph (1) of this subsection, the Commission shall issue notice to the transferor operator, providing the operator 15 days to contest the transfer and request a hearing. Upon receipt of a timely response requesting a hearing, the matter shall be referred to the Hearings Division for adjudication as a contested case.

(p) A pipeline operator who operates a pipeline without a permit, with an expired permit, or who otherwise fails to comply with this section, may be assessed a penalty as prescribed in §8.135 of this title (relating to Penalty Guidelines for Pipeline Safety Violations).

(q) Interstate pipelines are exempt from the fee requirements of this section.

(r) Beginning December 9, 2024, operators shall comply with the following.

(1) All gas permits shall be amended to include all gas gathering pipelines defined as Type A, Type B, Type C, or Type R in 49 CFR §192.8. The permit amendments shall be filed on the Commission's online permitting system by March 31, 2025. The amendment shapefile shall indicate each segment as Type A, Type B, Type C, or Type R, and include any other information requested by the Commission.

(2) A gas permit will not be eligible for renewal if the permit has not been amended by March 31, 2025, in accordance with paragraph (1) of this subsection. If the gas permit does not have any gas gathering pipelines to be amended or added, the operator shall include with its 2025 renewal submission a statement on the submitted cover letter attesting to that fact. The Commission may request additional information as necessary to confirm the statement.

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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Railroad Commission of Texas
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CHAPTER 4. ENVIRONMENTAL PROTECTION

The Railroad Commission of Texas (Commission) proposes in Chapter 4, new Subchapter A, relating to Oil and Gas Waste Management, which includes the following proposed new rules: In Division 1, General, the Commission proposes §4.101 (relating to Prevention of Pollution); §4.102 (relating to Responsibility for Oil and Gas Wastes); §4.103 (relating to Prohibited Waste Management Methods); §4.104 (relating to Coordination Between the Commission and Other Regulatory Agencies); §4.106 (relating to Fees); §4.107 (relating to Penalties); §4.108 (relating to Electronic Filing Requirements); and §4.109 (relating to Exceptions). In Division 2, Definitions, the Commission proposes §4.110 (relating to Definitions). In Division 3, Operations Authorized by Rule, the Commission proposes §4.111 (relating to Authorized Disposal Methods for Certain Wastes); §4.112 (relating to Authorized Recycling); §4.113 (relating to Authorized Pits); §4.114 (relating to Schedule A Authorized Pits); and §4.115 (relating to Schedule B Authorized Pits). In Division 4, Requirements for All Permitted Waste Management Operations, the Commission proposes §4.120 (relating to General Requirements for All Permitted Operations); §4.121 (relating to Permit Term); §4.122 (relating to Permit Renewals, Transfers, and Amendments); §4.123 (relating to Permit Modification, Suspension and Termination); §4.124 (relating to Requirements Applicable to All Permit Applications and Reports); §4.125 (relating to Notice and Opportunity to Protest); §4.126 (relating to Location and Real Property Information); §4.127 (relating to Engineering and Geologic Information); §4.128 (relating to Design and Construction); §4.129 (relating to Operation); §4.130 (relating to Reporting); §4.131 (relating to Monitoring); §4.132 (relating to Closure); §4.134 (relating to Application Review and Administrative Decision); and §4.135 (relating to Hearings. In Division 5, Additional Requirements for Commercial Facilities, the Commission proposes §4.140 (relating to Additional Requirements for Commercial Facilities); §4.141 (relating to Additional Notice Requirements for Commercial Facilities); §4.142 (relating to Operating Requirements Applicable to Commercial Facilities); and §4.143 (relating to Design and Construction Requirements for Commercial Facilities). In Division 6, Additional Requirements for Permitted Pits, the Commission proposes §4.150 (relating to Additional Requirements Applicable to Permitted Pits); §4.151 (relating to Design and Construction of Permitted Pits); §4.152 (relating to Monitoring of Permitted Pits); §4.153 (relating to Commercial Disposal Pits); and §4.154 (relating to Closure of Permitted Pits). In Division 7, Additional Requirements for Landfarming and Landtreating, the Commission proposes §4.160 (relating to Additional Requirements for Landfarming and Landtreating Permits); §4.161 (relating to Design and Construction Requirements for Landfarming and Landtreating Permits); §4.162 (relating to Operating Requirements for Landfarming and Landtreating Permits); §4.163 (relating to Monitoring); and §4.164 (relating to Closure). In Division 8, Additional Re-

quirements for Reclamation Plants, the Commission proposes §4.170 (relating to Additional Requirements for Reclamation Plants); §4.171 (relating to Standard Permit Provisions); §4.172 (relating to Minimum Permit Provisions for Operations); and §4.173 (relating to Minimum Permit Provisions for Reporting). In Division 9, Miscellaneous Permits, the Commission proposes §4.180 (relating to Activities Permitted as Miscellaneous Permits); §4.181 (relating to Emergency Permits); §4.182 (relating to Minor Permits); §4.184 (relating to Permitted Recycling); and §4.185 (relating to Pilot Programs). In Division 10, Requirements for Oil and Gas Waste Transportation, the Commission proposes §4.190 (relating to Oil and Gas Waste Characterization and Documentation); §4.191 (relating to Oil and Gas Waste Manifests); §4.192 (relating to Special Waste Authorization); §4.193 (relating to Oil and Gas Waste Haulers); §4.194 (relating to Recordkeeping); and §4.195 (relating to Waste Originating Outside of Texas). In Division 11, Requirements for Surface Water Protection, the Commission proposes §4.196 (relating to Surface Water Pollution Prevention) and §4.197 (relating to Consistency with the Texas Coastal Management Program).

The new rules are proposed to incorporate and update the requirements from §3.8 of this title, relating to Water Protection, which is proposed to be amended concurrently with the new rules and amendments in Chapter 4. The new subchapter also ensures Commission rules adhere to statutory changes made in recent legislative sessions.

The Commission also proposes amendments and new rules in Subchapter B, relating to Commercial Recycling, to incorporate legislative requirements and make updates consistent with the new rules proposed in Subchapter A. The Commission proposes to amend the following rules in Subchapter B, Division 1: §4.201 (relating to Purpose), §4.202 (relating to Applicability and Exclusions), §4.203 (relating to Responsibility for Management of Waste to be Recycled), §4.204 (relating to Definitions), §4.205 (relating to Exceptions), §4.206 (relating to Administrative Decision on Permit Application), §4.207 (relating to Protests and Hearings), §4.208 (relating to General Standards for Permit Issuance), §4.209 (relating to Permit Renewal), and §4.211 (relating to Penalties); in Division 2, §4.212 (relating to General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities), §4.213 (relating to Minimum Engineering and Geologic Information), §4.214 (relating to Minimum Design and Construction Information), §4.218 (relating to General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling), §4.219 (relating to Minimum Siting Information), §4.220 (relating to Minimum Permit Provisions for Design and Construction), §4.221 (relating to Minimum Permit Provisions for Operations), §4.222 (relating to Minimum Permit Provisions for Monitoring), §4.223 (relating to Minimum Permit Provisions for Closure), and §4.224 (relating to Permit Renewal); in Division 3, §4.230 (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling), §4.231 (relating to Minimum Engineering and Geologic Information), §4.232 (relating to Minimum Siting Information), §4.234 (relating to Minimum Design and Construction Information), §4.238 (relating to Notice), §4.239 (relating to General Permit Provisions), §4.240 (relating to Minimum Permit Provisions for Siting), §4.241 relating to Minimum Permit Provisions for Design and Construction), §4.242 (relating to Minimum Permit Provisions for Operations), §4.243 (relating to Minimum Permit Provisions for Monitoring), and §4.245 (relating to Permit Renewal); in Division 4, §4.246 (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), §4.247 (relating to Minimum Engineering and Geologic Information), §4.248 (relating to Minimum Siting Information), §4.250 (relating to Minimum Design and Construction Information), §4.251 (relating to Minimum Operating Information), §4.254 (relating to Notice), §4.255 (relating to General Permit Provisions), §4.256 (relating to Minimum Permit Provisions for Siting), §4.257 (relating to Minimum Permit Provisions for Design and Construction), §4.258 (relating to Minimum Permit Provisions for Operations), §4.259 (relating to Minimum Permit Provisions for Monitoring), and §4.261 (relating to Permit Renewal); in Division 5, §4.262 (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), §4.263 (relating to Minimum Engineering and Geologic Information), §4.264 (relating to Minimum Siting Information), §4.266 (relating to Minimum Design and Construction Information), §4.267 (relating to Minimum Operating Information), §4.268 (relating to Minimum Monitoring Information), §4.269 (relating to Minimum Closure Information), §4.270 (relating to Notice), §4.271 (relating to General Permit Provisions), §4.272 (relating to Minimum Permit Provisions for Siting), §4.273 (relating to Minimum Permit Provisions for Design and Construction), §4.274 (relating to Minimum Permit Provisions for Operations), §4.275 (relating to Minimum Permit Provisions for Monitoring), §4.276 (relating to Minimum Permit Provisions for Closure), and §4.277 (relating to Permit Renewal); in Division 6, §4.278 (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), §4.279 (relating to Minimum Engineering and Geologic Information), §4.280 (relating to Minimum Siting Information), §4.282 (relating to Minimum Design and Construction Information), §4.283 (relating to Minimum Operating Information), §4.284 (relating to Minimum Monitoring Information), §4.285 (relating to Minimum Closure Information), §4.286 (relating to Notice), §4.287 (relating to General Permit Provisions), §4.288 (relating to Minimum Permit Provisions for Siting), §4.289 (relating to Minimum Permit Provisions for Design and Construction), §4.290 (relating to Minimum Permit Provisions for Operations), §4.291 (relating to Minimum Permit Provisions for Monitoring), §4.292 (relating to Minimum Permit Provisions for Closure), and §4.293 (relating to Permit Renewal).

The Commission also proposes new §4.301 (relating to Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings), and §4.302 (relating to Additional Permit Requirements for Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings) in new Division 7, Beneficial Use of Drill Cuttings.

The Commission proposes new Subchapter A to relocate and update the requirements in §3.8. Section 3.8 or "Statewide Rule 8" has existed in its current form since 1984 with only minor modifications since then. Expectations for environmental protection have evolved considerably over the past 40 years, and routine industry practices have changed significantly since the onset of shale extraction in the early 2000s. Within the last several years, additional industry growth, new technological advancements, and innovative solutions for resource development challenged the flexibility of these historic regulations. For example, there is a rapidly evolving need to encourage the treatment and recycling of produced water for beneficial uses within the oil and gas industry and for novel beneficial uses outside of the industry. The Legislature has directed the Commission to encourage fluid oil and gas waste recycling (House Bill 3516, 87th Legislature, 2021), and it has also created the Texas Produced

Water Consortium (Senate Bill 601, 87th Legislature, 2021) to make recommendations to the Legislature on issues related to this potential activity. Already, many exploration and production operators and water midstream service providers are investing in infrastructure and pilot studies to assess the economic, logistical, environmental, and practical possibilities of produced water recycling. The Commission's rules need to address and support these developments.

In addition to House Bill 3516, House Bill 2201 (87th Legislature, 2021) directed the Commission to adopt rules governing permissible locations for pits used by commercial oil and gas disposal facilities and Senate Bill 1541 (85th Legislature, 2017) required the Commission to incorporate criteria for beneficial uses of recycled drill cuttings. The Commission proposes new requirements in Subchapter A to address House Bill 2201 and proposes new rules in Subchapter B to address the requirements of Senate Bill 1541.

Many of the requirements from Section 3.8 are incorporated into proposed new rules in Subchapter A of Chapter 4. In some sections, the Commission proposes that compliance be achieved by a future date after the new rules and amendments to Chapter 4 have become effective. The Commission proposes that the new rules and amendments go into effect July 1, 2025, which is approximately six months after the anticipated default effective date. Many provisions are proposed with a later effective date of six months to one year from July 1, 2025, to provide additional time for compliance. Effective dates are reflected in the following sections: 4.109, 4.113, 4.115, 4.121, 4.122, 4.123, 4.140, 4.170, 4.202, 4.266, 4.273, 4.282, and 4.289. The Commission notes that if the rulemaking timeline changes, the rules may be adopted at a later date. If that occurs, the proposed effective dates will be updated upon adoption.

Proposed New Rules in Subchapter A

Proposed Division 1 of Subchapter A addresses general requirements. Proposed §4.101 communicates the subchapter's purposes - to prevent pollution and protect the public health, public safety, and the environment within the scope of the Commission's authority. Section 4.101 also clarifies that certain other wastes generated by activities under the Commission's jurisdiction may be managed in accordance with Subchapter A as long as the wastes are nonhazardous and chemically and physically similar to oil and gas wastes. The list of activities that may generate waste under the Commission's jurisdiction includes activities such as brine mining and injection wells and Class VI carbon sequestration program wells.

The Commission proposes §4.102 to require generators of oil and gas waste to characterize the waste. Generally, process knowledge may be used to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110 (relating to Definitions). However, laboratory analysis of waste may be required for waste generated at a commercial facility or transferred from one commercial facility to another. Proposed subsections (b) through (e) prohibit persons from using waste management or transport services if those services are not properly permitted or authorized. Any person who uses the services of a carrier or receiver has a duty to determine whether the carrier or receiver has appropriate authority to manage or transport oil and gas wastes. Proposed subsections (f) and (g) prohibit management or disposal of oil and gas wastes in a manner that violates Commission rules. Proposed subsection (h) requires that the Commission be notified if a person conducting activities under the Commission's jurisdiction files for bankruptcy.

The Commission proposes §4.103 to specify waste management methods that are prohibited. Generally, a Commission authorization or permit to manage waste is required except in three instances: (1) as authorized by §4.111 (relating to Authorized Disposal Methods for Certain Wastes); (2) as authorized by §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste); or (3) by underground injection for disposal permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs). Recycling oil and gas wastes without a permit is prohibited unless the recycling is conducted pursuant to §4.112 (relating to Authorized Recycling).

Proposed §4.104 clarifies how the Commission will implement its authority over activities for which other regulatory agencies have related jurisdiction.

Proposed §4.106 notifies persons required to comply with Subchapter A that fees and corresponding surcharges may apply pursuant to §3.78 (relating to Fees and Financial Security Requirements).

Proposed §4.107 contains the guidelines for assessing penalties for violations of Subchapter A. The structure and content of proposed §4.107 is similar to the Commission's other penalty rules such as §8.135 (relating to Penalty Guidelines for Pipeline Safety Violations), §9.15 (Penalty Guidelines for LP-Gas Safety Violations), and §18.12 (relating to Penalty Guidelines). Importantly, proposed §4.107 is substantively similar to §3.107, which is the rule the Commission utilized to recommend penalties for violations of §3.8, the predecessor to proposed Subchapter A.

The Commission proposes §4.108 to ensure all required filings are made electronically if the Commission has provided an electronic version of a form or an electronic filing system. The section also clarifies that the standards for electronic filings are the same as those for filings in other formats.

Proposed §4.109 allows applicants or permittees to request exceptions to the requirements of Subchapter A if the applicant or permittee can show that the requested alternative is at least equivalent in the protection of public health and safety and the environment as the provision to which the exception is requested. Proposed subsection (a) clarifies that exceptions to financial security requirements, notice requirements, and certain sampling and analysis requirements will not be considered.

Proposed §4.110 contains the proposed definitions for Chapter 4, including Subchapters A and B. Several definitions are proposed consistent with terms defined in the predecessor rule, §3.8. Other terms are added or modified. For example, the proposed terms "authorized" and "authorized pit" clarify that an authorized activity is one that is permitted by rule. Also, the proposed definitions of the terms "commercial facility" and "non-commercial facility" are altered to reduce confusion regarding these types of facilities.

"Commercial facility" is proposed as a facility permitted under Division 4, whose owner or operator receives compensation from others for the management of oil field fluids or oil and gas wastes and whose primary business purpose is to provide these services for compensation. Conversely, "non-commercial facility" is proposed as a facility authorized or permitted under Subchapter A that is not a commercial facility. This new definition corresponds to proposed changes for produced water recycling pits,

some of which were previously classified as non-commercial fluid recycling pits. "Produced water recycling" is proposed as the recycling of produced water and other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production activities. The Commission also proposes corresponding definitions of "produced water recycling facility" and "produced water recycling pit." These new terms and definitions are proposed to replace "non-commercial fluid recycling" and "non-commercial fluid recycling pit." The term "drill cuttings" is proposed to be defined as the term is defined in Texas Natural Resources Code §123.001. "Public area" is proposed to be defined as a dwelling, place of business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can expect to be populated, which is the same definition that appears in §3.36 (relating to Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas).

Proposed Division 3 of Subchapter A relates to Operations Authorized by Rule. The rules proposed in this division allow operators to conduct certain waste management activities through a "permit by rule" system - the operator is not required to obtain a permit through a permit application and review process. Instead, the operator is authorized to engage in the activity as long as the applicable rule requirements are met.

Proposed §4.111 provides that certain wastes may be disposed of without first obtaining a permit from the Commission if the disposal complies with the requirements of the section. Proposed subsection (a) addresses water condensate, proposed subsection (b) addresses inert oil and gas wastes, proposed subsection (c) addresses low-chloride water-based drilling fluid, and subsection (d) addresses other specific wastes generated during drilling, completion, and workover activities.

Similarly, proposed §4.112 allows recycling without a permit in certain instances. Produced water recycling is authorized if treated fluid is recycled for use in drilling operations, completion operations, hydraulic fracturing operations, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well; produced water recycling pits are operated in accordance with §4.113 and §4.115; and recycling is limited to oil and gas waste.

Proposed §4.113 specifies types of waste management pits that may be operated without a permit if they comply with the requirements of §4.113. These pits include reserve pits, mud circulation pits, completion/workover pits, fresh makeup water pits, fresh mining water pits, and water condensate pits. Proposed subsection (c) provides instructions for pits authorized under the predecessor rule, §3.8. Most types of pits authorized by §3.8 and compliant with that section prior to July 1, 2025 may continue to operate unless they cause pollution. However, basic sediment pits, flare pits, and other pits not listed as authorized pits in proposed §4.113 must obtain a permit or be closed in accordance with proposed new subchapter A by July 1, 2026. Also, as discussed in the paragraphs below regarding proposed §4.114 and §4.115, proposed new Subchapter A alters terminology and requirements related to non-commercial fluid recycling. Proposed §4.113(c)(3) states that each non-commercial fluid recycling pit shall be registered and supported by financial assurance by January 1, 2026, or the pit must be closed.

Proposed §4.113(d) contains new requirements for registration of all authorized pits. The Commission currently collects minimal information about authorized pits (i.e., pits "permitted by rule"). The proposed new rules will enable the Commission to identify and inspect these facilities and collect data regarding their operations. The Commission notes that the proposed registration process will not require prior approval for pits authorized under proposed §4.113. Proposed subsection (d) contains timelines for when authorized pits must be registered. Proposed subsection (e) requires the operator to submit five pieces of information prior to operating the pit: (1) the type of pit; (2) the location of the pit and its Commission-issued identifier; (3) the pit dimensions and capacity; (4) the expected depth to groundwater from the bottom of the pit; and (5) for produced water recycling pits, the financial security required by §4.115. Once the registration is submitted, the operator may begin operations - the operator is not required to wait for Commission review or approval of the submitted information. Produced water recycling pits have a slightly different process, as described in the paragraph on proposed §4.115.

The Commission proposes §4.114 to specify requirements for Schedule A authorized pits. The Commission proposes that authorized pits (pits "permitted by rule") be divided into two categories: Schedule A and Schedule B. Each category imposes different requirements. Schedule A pits include reserve pits, mud circulation pits, completion/workover pits, freshwater makeup pits, fresh mining water pits, and water condensate pits. Proposed §4.114(1) specifies the contents for each type of Schedule A authorized pit. Proposed §4.114(2) contains construction requirements for Schedule A pits. Specifically, the Commission proposes liner requirements for reserve pits, mud circulation pits, and completion/workover pits located in areas where groundwater is present within 50 feet of the bottom of the pit. Proposed §4.114(3) provides requirements for closure of pits authorized under the section.

The Commission proposes §4.115 to create new terminology and requirements for produced water recycling pits, which are classified as Schedule B Authorized Pits. Under the current version of §3.8, some produced water recycling pits are classified as non-commercial fluid recycling pits and are considered authorized pits. However, the current definition of non-commercial includes several conditions that lead to confusion and create an overly complex regulatory scheme. The proposed changes classify as produced water recycling pits all pits used to manage produced water and other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production activities. The intent of the proposed changes is to eliminate confusion and treat pits with similar waste management activities and contents the same.

The Commission proposes additional requirements for Schedule B authorized pits because these pits are generally larger in size, manage a larger volume of waste, and are operated for a longer time compared to Schedule A authorized pits. First, proposed §4.115(b) requires an operator of a produced water recycling facility to maintain a performance bond or other form of financial security conditioned that the permittee will operate the pit in accordance with Commission rules. The amount of financial security an operator must file is dependent on the number and total volume of the operator's pits. The financial assurance must be filed with the Commission when the produced water recycling pits are registered with the Commission. Proposed subsection (c) provides additional time for compliance for non-commercial fluid recycling pits authorized prior to July 1, 2025. Under proposed new §4.115, these pits continue to be authorized, but must be registered and secured by a performance bond or other form of financial security as required by §4.115 by January 1, 2026. Proposed subsection (d) clarifies which types of fluids

and wastes are authorized to be deposited into a produced water recycling pit.

Second, Schedule B authorized pits are subject to siting requirements. These requirements are proposed in §4.115(e). No produced water recycling pit shall be located on a barrier island or a beach, within 300 feet of surface water, within 500 feet of any public water system well or intake, within 300 feet of or any domestic water well or irrigation water well (other than a well that supplies water for drilling or workover operations for which the pit is authorized), within a 100-year flood plain, or within 500 feet of a public area.

Third, proposed subsection (f) imposes general design and construction requirements for Schedule B authorized pits including that the pit is large enough to ensure adequate storage of the material to be managed and to maintain two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event. Proposed subsection (f) also contains design and construction requirements for managing non-contact stormwater runoff. In proposed subsection (f)(5), the Commission proposes more stringent liner requirements for Schedule B authorized pits. All Schedule B authorized pits shall be lined in accordance with proposed (f)(5).

Proposed subsection (g) contains general operating requirements for Schedule B pits, such as maintaining sufficient capacity, ensuring liner integrity, establishing a schedule of inspections to be conducted by the operator at least annually or installing a double liner and leak detection system, and maintaining required records.

Fourth, the Commission proposes additional closure requirements for Schedule B authorized pits in §4.115(h) through (j). Proposed subsection (h) contains general closure requirements for all Schedule B pits, regardless of whether the waste is removed for disposal or buried in place in accordance with proposed §4.111. Proposed subsection (i) provides additional requirements for closure when all waste from a produced water recycling pit is removed for disposal at an authorized or permitted waste facility. The proposed requirements in subsection (i) include a requirement to collect a five-point composite soil sample for each acre of pit surface area and analyze the sample for the constituents identified in the Figure proposed in subsection (i). Alternatively, the operator may use background soil concentrations at closure. However, to use background soil concentrations, the operator is required to establish the background concentrations before or during pit construction in accordance with proposed §4.115(i)(3)(B). Proposed subsection (j) provides closure requirements in addition to those proposed in subsection (h) when waste will be buried in place pursuant to §4.111. These requirements also address collecting a five-point composite sample and analyzing in accordance with the Figure or using background concentrations established prior to operations.

Finally, proposed subsection (k) specifies groundwater monitoring requirements for Schedule B authorized pits. Proposed subsection (k)(1) requires the operator to review readily available public information to evaluate whether groundwater is likely to be present within 100 feet of the ground surface. If the evaluation determines that groundwater is likely to be present within 100 feet of the ground surface, then groundwater monitoring is required unless the pit has a double synthetic liner with an operational leak detection system or the pit has a liner and an active life of less than one year. Groundwater monitoring standards are proposed in subsection (k)(4)-(8).

Proposed Division 4 of Subchapter A contains the general requirements for all other waste management activities that are not authorized under Division 3. These waste management activities require a permit before the operator may conduct the activity. Many of the requirements in Divisions 4 through 9 are similar to permit conditions in permits currently issued by the Commission. The Commission proposes that these standards be incorporated into Divisions 4 through 9, as applicable. The Commission also proposes additional standards for permitted facilities to ensure the rules address the complex needs and requirements of contemporary waste management and environmental protection practices.

Proposed §4.120 identifies the Commission's purpose in permitting - the Commission will not issue a permit if the Commission determines the proposed activity will result in: (1) the endangerment of human health or the environment; (2) the waste of oil, gas, or geothermal resources; or (3) the pollution of surface or subsurface water. Proposed §4.120 also clarifies that all permitted waste management activities are subject to financial security requirements. Finally, §4.120(e) provides a list of waste management activities governed by Subchapter A and specifies which division applies to each activity. For example, permitted pits must comply with the requirements in Division 6 in addition to the requirements of Division 4, which apply to all waste management activities that must obtain a permit.

The Commission proposes §4.121 to incorporate a permit term for all waste management permits, which shall be not more than five years. Currently, some Commission permits do not expire. Permits issued pursuant to §3.8 prior to the proposed effective date for new Subchapter A (July 1, 2025), are proposed to remain in effect until they expire on their own terms, are renewed pursuant to the proposed new requirements, or are modified, suspended or terminated by the Commission. Proposed §4.121 also clarifies that permits remain in effect while a timely-filed renewal application is under review by the Commission.

Proposed §4.122 outlines requirements for permit renewals, transfers, and amendments. Proposed subsection (a) addresses situations in which a permit issued prior to the effective date of proposed new Subchapter A is renewed, transferred, or amended. The Commission will review the permit conditions and may revise them to ensure compliance with the rules in effect at the time of the renewal, transfer, or amendment. However, proposed subsection (a) states that for permits issued under the predecessor rule §3.8, the Commission will not require an operator to relocate or retrofit existing waste management units to conform to new siting or construction standards. The Commission may require operators to add or improve groundwater monitoring at those existing facilities or to combine all waste management units at a facility under one permit. Proposed §4.122(b) contains the requirements to renew permits, including the requirement to file a renewal application at least 60 days prior to the permit's expiration date and the requirement to comply with notice in accordance with §4.125. Proposed §4.122 clarifies that permit renewals, transfers, and amendments will generally be issued for 5-year terms, though transfers will be issued through the current permitted expiration date unless the transfer is combined with a permit renewal or amendment. Like renewals, proposed subsection (c) states that a transfer shall be filed 60 days in advance of the transfer. Proposed subsection (d) requires that amendments be filed at least 90 days before the proposed new operations are scheduled to commence. Amendments are generally subject to the notice requirements of §4.125, but the Director may modify or waive those require-

ments if the proposed permit amendments will have a minimum impact as described in proposed §4.122(d)(2)(C).

Proposed §4.123 contains requirements for permit modification, suspension, or termination. A permit issued under proposed new Subchapter A or pursuant to §3.8 prior to July 1, 2025, may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for a hearing. Proposed subsection (b) outlines the factors that constitute good cause.

The Commission proposes §4.124 to specify permit application filing requirements and contents. The Commission also proposes requirements for technical data required to be filed with the application, such as requirements for submitting geographic coordinates, maps, plans, diagrams, chemical laboratory analyses, and NORM screening surveys.

Proposed §4.125 addresses notice requirements for all permitted facilities. Generally, the proposed notice requirements are not dissimilar to Commission notice requirements in other areas. However, proposed subsection (b) alters the traditional timing of notice to require a permit applicant to provide notice after Commission staff determines that a permit application is complete under §1.201(b) (relating to Time Period for Processing Applications and Issuing Permits Administratively). This change will ensure that notice recipients receive an accurate copy of the permit application after Technical Permitting has completed the initial review. It will also reduce the potential for re-notification due to changes made at the request of Technical Permitting after the original permit application is filed. Proposed subsection (c) specifies the required notice recipients and proposed subsection (d) contains the required method and contents of the notice. Importantly, the notice must state that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice. Proposed subsection (d)(4) states that the Director may authorize notice by publication in accordance with §4.141 (relating to Additional Notice Requirements for Commercial Facilities) if the applicant, after diligent efforts, is unable to determine the persons to be notified. Proposed subsection (e) requires an applicant to provide proof of notice to the Commission, and proposed subsection (f) outlines the process for filing a protest. A timely protest will prompt a hearing on the permit application.

The Commission proposes §4.126 to outline the location and real property information required to be included in the permit application. This information includes the physical address, geographic coordinates, property description, a statement regarding the authority by which the operator has a right to permit and operate the proposed facility, and a general location map containing the components required by proposed subsection (c).

Proposed §4.127 contains the requirements for engineering and geologic information submitted in the permit application.

The Commission proposes §4.128, which contains requirements related to the facility's design and construction. Proposed §4.128 includes requirements for information to be included in the permit application as well as requirements for the constructing the facility. The permit application shall include a facility diagram that complies with proposed subsection (a)(1), a description of any liners or engineering/geologic information demonstrating that liners are not necessary, a map view and two perpendicular cross-sectional views of pits and storage areas to be constructed, and a plan to control and manage all stormwater runoff. Proposed subsection (b) contains requirements for designing and constructing the permitted facility.

Similar to §4.128, proposed §4.129 includes requirements for information to be included in the permit application relating to the facility's operation, as well as requirements for operating the facility once permitted.

Proposed §4.130 specifies the requirements for retaining records and submitting periodic reports to the Commission.

The Commission proposes §4.131 to explain the factors the Commission will consider in determining whether groundwater monitoring is required when groundwater is present within 100 feet below the ground surface. The factors include the volume and characteristics of the oil and gas waste to be managed, the depth to and quality of groundwater, and the presence or absence of natural clay layers in subsurface soils. If groundwater monitoring is required, the operator shall comply with the requirements of proposed subsection (b)(2) through (b)(4).

Proposed §4.132 contains requirements related to closure. The section includes requirements for a closure plan to be included in the permit application and specifies the contents of the closure plan. The section also specifies how facilities shall be closed. Importantly, in addition to specifying requirements for closure, proposed subsection (b) requires that a permittee notify Technical Permitting and the District Office in writing at least 45 days prior to commencement of closure operations. The permittee is then required to submit a detailed closure plan to Technical Permitting 30 days prior to commencing closure operations. Proposed subsection (b)(2) lists the required contents of the closure plan.

The Commission proposes §4.134, which states that Technical Permitting reviews applications filed under Subchapter A in accordance with §1.201 (relating to Time Periods for Processing Applications and Issuing Permits Administratively).

Proposed §4.135 contains the process for a hearing when a permit application is denied, a timely protest to the application is received, or when the applicant disagrees with permit conditions required by the Director.

Proposed Divisions 5 through 9 contain requirements for certain waste management activities. Operators of facilities governed by these divisions must comply with the requirements set forth in the division in addition to the requirements set forth in Division 4. Facilities may be governed by more than one division in addition to the general requirements of Division 4. For example, a commercial disposal pit would be subject to the requirements of Division 4 and the requirements of Division 5 (relating to Additional Requirements for Commercial Facilities) and the requirements of Division 6 (relating to Additional Requirements for Permitted Pits). This intent is clarified in §4.140, §4.150, and §4.160, which state that in addition to the requirements of the applicable division, the permittee shall comply with Division 4 and any other sections of Subchapter A applicable to the permittee's management of oil and gas wastes.

Proposed Division 5 contains the additional requirements for commercial facilities. Proposed §4.140(b) recognizes that new definitions and requirements proposed in Subchapter A may alter a facility's classification such that a facility considered non-commercial prior to July 1, 2025 may be considered commercial after that date (the estimated effective date of the new rules). Such facilities are required to comply with the requirements of Division 5 or request an exception on or before July 1, 2026. Proposed subsections (c) through (g) contain financial security requirements, including requirements for preparing a closure-cost estimate (CCE) and obtaining Commission ap-

proval of the CCE prior to beginning operations at the subject facility. Proposed subsection (h) contains additional closure requirements for stationary commercial fluid recycling facilities.

In addition to the notice requirements outlined in §4.125, the Commission proposes that commercial facilities provide notice by publication. The notice shall be published in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) but before the final review is completed. Proposed subsection (c) contains the requirements for the notice form and contents. One required component of the notice is a statement that an affected person may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication. Proposed subsection (d) requires the applicant to submit proof of publication, which shall consist of an affidavit from the newspaper publisher and the tear sheets for each published notice.

Additional operating requirements for commercial facilities are proposed in §4.142. These requirements include a detailed waste acceptance plan, a site-specific spill control plan, and a stormwater management plan.

The Commission proposes §4.143 to require a permittee of a commercial facility to provide drawings documenting the as-built condition of the facility prior to commencement of operations.

Division 6 is proposed to specify additional requirements for permitted pits. As mentioned above, proposed §4.150(a) clarifies that in addition to the requirements of Division 6, the permittee shall comply with Division 4 and Division 5. Proposed subsection (b) states that if at any time a pit no longer meets the requirements for authorized pits under §4.113, the operator of the pit shall apply for a pit permit pursuant to the requirements of Division 6. Proposed subsections (c) and (d) prohibit unauthorized use of a pit and specify the consequences of unauthorized use. The Commission proposes subsection (f) to outline required action by an operator in the event of an unauthorized release of pit substances. Proposed subsections (g) and (h) contain specific location requirements for pits. Subsection (g) states that a pit shall not be located on a barrier island or a beach, within 300 feet of surface water including wetlands, within 500 feet of any public water system well or intake, within 300 feet of any domestic water well or irrigation water well (other than a well that supplies water for drilling or workover operations for which the pit is authorized), or within a 100-year flood plain. Proposed subsection (h) requires a minimum 50-foot buffer zone be maintained between the boundaries of the property and the outer edge or toe of the pit walls or berms.

Proposed §4.151(a) contains information that must be included in a pit permit application in addition to the information required by §4.128. Proposed §4.151(b) specifies additional operating requirements related to signage, freeboard, and liners. Pits permitted pursuant to Subchapter A are also subject to additional requirements that the Director determines are necessary to prevent pollution.

The Commission proposes §4.152 to require a permittee governed by Division 6 to implement a monitoring plan in which the permittee routinely monitors the integrity of the pit liner. The permittee may implement one of three methods: (1) emptying the pit and conducting a visual inspection on an annual basis; (2) installing a double liner and leak detection system between the primary and secondary liner that is monitored on a daily or weekly basis; or (3) proposing an alternative monitoring method by demonstrating the alternative method is at least as protective of surface and subsurface waters as the other two methods. Proposed subsection (b) specifies how to determine if a primary liner in a double liner and leak detection system has failed. If a liner failure is discovered at any time, the permittee must comply with the requirements in proposed subsection (b)(3).

In accordance with House Bill 2201 from the 87th Legislative Session, the Commission proposes §4.153 to incorporate siting requirements for commercial disposal pits. Under proposed subsection (a)(1), the application for a pit at a commercial disposal facility shall include documentation of a good faith investigation of the 10-year flooding history of the property to determine whether the facility is located in a flood-prone area. Proposed subsection (a)(2) contains the siting requirements for a commercial disposal pit. Such a pit shall not be located in an area in which the disposal pit is not sufficiently isolated to prevent pollution of surface or subsurface waters, a prohibited location defined in Division 11 (relating to Requirements for Surface Water Protection), or any other location where there is an increased risk to surface or subsurface waters. The application shall contain information to demonstrate that the pit will not be located in one of the areas prohibited under proposed subsection (a)(2). Proposed subsections (b) and (c) contain the requirements for design and construction of the disposal pit and closure of the disposal pit. Specifically, for commercial disposal pits, a post-closure monitoring period of no less than five years is required.

Closure requirements for all permitted pits are proposed in §4.154.

Proposed Division 7 applies to permits for landfarming and landtreating. Proposed §4.160 clarifies that the requirements in Division 4 must be adhered to in addition to the requirements of Division 7.

The Commission proposes §4.161(a) to require additional information in applications for landfarming and landtreating such as facility diagrams including two perpendicular, sectional views of all landfarming cells to be constructed and depicting the locations and dimensions of all areas where landfarming and landtreating will occur. The Commission notes that the proposed definition of landfarming cell in §4.110 includes landtreating cells. Proposed subsection (a)(1)(B) restricts the areas where landfarming and landtreating will occur by requiring that a minimum 50-foot buffer zone be maintained between the boundaries of the property and the treatment cells, measured from the toe of the constructed berm to the property boundary, and a minimum 300-foot buffer zone be maintained between the toe of the constructed berms and any drainage features or surface waters. Proposed subsection (a)(2) requires an applicant for a landfarming or landtreating permit to demonstrate that the area has at least 20 inches of tillable soil suitable for the application, treatment, and disposal of oil and gas waste. Additional information is required in proposed subsection (a)(3) to enable the Director to determine whether the proposed facility will pose a threat of pollution or a threat to public health or safety. Berm construction requirements are proposed in subsection (b). Proposed subsection (c) contains the reasons the Director may deny an application for a landfarming or landtreating permit, which include that the facility is proposed to be located in a sensitive area such as those listed in proposed subsection (c)(1) through (c)(6).

Proposed §4.162 requires additional information in a landfarming or landtreating application such as the estimated chloride

concentration of the waste to be accepted at the facility, the procedure by which waste will be mixed into the soil, plans for monitoring and testing the landfarming area, and the total cumulative height and volume of the waste to be landfarmed over the active life of the operation. Operating requirements specific to landfarming and landtreating permits are proposed in §4.162(b).

The Commission proposes §4.163 to require monitoring of three soil zones in each active cell. Subsection (a) contains required monitoring frequencies for the surface treatment zone, the waste treatment zone, and the compliance monitoring zone. Proposed subsections (b) and (c) contain requirements for collecting and analyzing soil samples. Proposed subsection (d) specifies the limitations for which the samples must be analyzed in a Figure proposed in the subsection, and outlines the process an operator must follow if the sample exceeds those limitations. Proposed subsection (e) requires that documentation of the sampling and analysis be filed with Technical Permitting and the District Office as part of the quarterly report required by the permit.

Section 4.164 is proposed to contain closure requirements specific to landfarming and landtreating permits.

Division 8 is proposed to describe the requirements applicable to permitted reclamation plants and is substantively similar to current §3.57 (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials), which is proposed to be amended concurrently with the proposed new rules in Subchapter A. The Commission proposes two notable changes to its regulatory requirements for reclamation plants. First, under current §3.57, reclamation plant permits do not expire. Proposed new §4.170 and §4.171 would limit a reclamation plant permit to a five-year term. Second, §3.57 prohibits reclamation plant permits from being transferred to another operator. Proposed new §4.171(b) allows reclamation plant permits to be transferred, renewed, or amended in accordance with §4.122. Proposed §4.170(a)(7) states that reclamation plant permits issued under §3.57 before July 1, 2025 expire five years from July 1, 2025 but may be renewed pursuant to §4.122.

Division 9 is proposed to specify requirements for emergency permits (§4.181), minor permits (§4.182), and permitted recycling (§4.184) that are generally consistent with the requirements for these permits contained in current §3.8. However, the Commission proposes new §4.185 to allow the approval of pilot projects for certain activities, such as the recycling of treated produced water. Pilot programs may be proposed to assess: (1) whether a recycled product can be reused in certain activities that are safe and protective of human health and the environment; (2) the efficiency and effectiveness of the recycling project; or (3) the appropriate regulatory requirements of a permitted recycling program. The pilot program may be authorized for a duration to be determined by the Commission if the Director finds that the proposed pilot program does not present a threat of pollution and encourages recycling of oil and gas wastes. The duration of the pilot program shall be sufficient to evaluate the pilot program objectives, which may include sufficient time to take an appropriate non-food-based crop from seed through one complete growing cycle. If after the approved duration, the Commission determines that the proposed pilot program prevents pollution and promotes the beneficial reuse of oil and gas waste, the Commission may authorize the recycling by permit pursuant to §4.184 of this title (relating to Permitted Recycling). Under proposed §4.185(c)(2), the Commission may also extend the pilot program in increments of no more than one year.

The Commission proposes Division 10 to incorporate requirements for transportation of oil and gas waste, including new regulations relating to oil and gas waste characterization and documentation. As specified in proposed §4.102, the generator of oil and gas waste is responsible for characterizing the waste. Proposed §4.190(a) incorporates that requirement and also specifies that the generator must document the waste characterization using a Waste Profile Form prior to transportation. Proposed subsection (b) states that an operator may use the form provided by the Commission or the operator's own form, provided the form includes the information listed in subsection (b)(1). To characterize waste, a generator may establish standard waste profiles for common types of oil and gas waste as described in proposed subsection (b)(2). Proposed §4.190(b)(3) requires a generator that chooses to dispose of or recycle its waste to provide the Waste Profile Form to the waste hauler and receiver, and proposed subsection (b)(4) requires the receiver to then include the waste profile information in the periodic reporting requirements specified in the facility permit conditions.

Proposed new §4.191 requires oil and gas waste that is transported by vehicle from the location where it is generated to another facility to either be accompanied by a paper manifest or be documented and tracked by an electronic manifest system. Proposed §4.191(b) specifies the required components of a manifest. Proposed subsection (c) requires that generator of the oil and gas waste, the waste hauler, and the receiver keep for a period of three years from the date of shipment copies or electronic records of all manifests. Proposed subsection (d) excepts oil and gas waste moved by pipeline from the manifest requirement but incorporates other requirements for operators of oil and gas waste pipeline systems.

Proposed §4.192 provides a process for obtaining approval for certain oil and gas waste to be managed at appropriate TCEQ-regulated facilities and for certain TCEQ-jurisdictional waste to be managed at appropriate RRC-regulated facilities. The process requires approval from both agencies on a special waste authorization form made available by the Commission.

Proposed §4.193 incorporates requirements for oil and gas waste haulers. These regulations are mostly unchanged from the current requirements of §3.8. However, proposed new §4.193(c) requires that an application for a waste hauler permit be made using the Commission's electronic system. In addition, proposed subsection (d) states the waste hauler permittee may not apply to renew its permit using the permittee's assigned permit number and by paying the fee required by §3.78 of this title until a minimum of 60 days before the expiration date specified in the permit. A waste hauler permittee is required to apply for a new permit number if the permittee submits a renewal application more than six months after the expiration of its permit. Proposed subsection (e) contains the permit conditions for oil and gas waste hauler permittees.

Proposed §4.194 requires all generators, waste haulers, and receivers to retain waste profiles, manifests and other documentation for at least three years and provide such records to the Commission upon request.

The Commission proposes §4.195 to ensure oil and gas waste generated outside the State of Texas and transported into Texas for management is accompanied by documentation to identify and track the waste.

Proposed in Division 11 are new §4.196 and §4.197, which are mostly unchanged from current §3.8(e) and §3.8(j). These sec-

tions are proposed to incorporate the requirements from §3.8 into the new rules in Subchapter A.

Proposed Amendments to Subchapter B

The Commission also proposes conforming amendments to Subchapter B of Chapter 4. Many of the amendments are proposed to replace references to §3.8 with the applicable provision now proposed to be included in new Subchapter A. Other amendments are proposed to ensure consistency between new Subchapter A and existing Subchapter B. For example, each time "appropriate district office" appears in Subchapter B, the term "appropriate" is proposed to be removed because "district office" is defined in Subchapter A to mean the district office where the waste management, disposal, and/or recycling is located. Amendments are also proposed in various sections to update Division and Department names and ensure terms are used consistently throughout the Subchapter. In addition, amendments are proposed to incorporate legislative requirements imposed by House Bill 3516 (87th Legislature, 2021) and Senate Bill 1541 (85th Legislature, 2017).

The following sections are proposed to be amended to remove references to §3.8 or to make other non-substantive updates: §§4.203, 4.207, 4.209, 4.218, 4.220, 4.222, 4.223, 4.239, 4.242, 4.243, 4.245, 4.250, 4.251, 4.255, 4.258, 4.259, 4.261, 4.267, 4.277, 4.287, and 4.293.

The Commission proposes amendments in §4.201 to ensure consistency with the purpose stated in proposed new §4.101.

Amendments proposed in §4.202 replace references to §3.8 with references to new Subchapter A of Chapter 4. Other proposed changes break out requirements into a list to improve readability and clarify that pits and waste management units at commercial facilities are required to be permitted. Proposed amendments in subsection (h) outline requirements for permits issued prior to the effective date of the proposed amendments, which is estimated to be July 1, 2025.

Amendments proposed in §4.204 clarify that the definitions proposed in new §4.110 of Subchapter A, relating to Definitions, apply in Subchapter B as well. Terms that already appear in proposed new §4.110 are removed from §4.204 to reduce confusion. The terms proposed to be amended or added to §4.204 are terms unique to Subchapter B or terms for which the meaning is altered for purposes of Subchapter B.

The Commission proposes amendments in §4.205(b) to clarify that a fee and surcharge are required to be submitted with a request for an exception to Commission rules. Proposed amendments in subsection (c) allow approval of a requested exception to a rule in Divisions 5 or 6 if the Director determines the request is substantially similar to previous exceptions approved by the Commission.

Amendments proposed in §4.208(c) require that all chemical laboratory analyses be performed using the appropriate Environmental Protection Agency (EPA) method or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory.

The Commission proposes to amend §4.211 to incorporate new penalty guidelines and standard penalty amounts for violations of rules in Subchapter B. The structure and content of proposed §4.211 is similar to the Commission's other penalty rules such as §3.107 (relating to Penalty Guidelines for Oil and Gas Violations), proposed new §4.107 in Subchapter A, §8.135 (relating to Penalty Guidelines for Pipeline Safety Violations), §9.15 (Penalty Guidelines for LP-Gas Safety Violations), and §18.12 (relating to Penalty Guidelines). The proposed figures also match the Commission's other penalty rules except that the figures proposed in §4.211 include references to rules in Subchapter B.

Proposed amendments in §4.212 update requirements for filing an application for on-lease solid oil and gas waste commercial recycling. The amendments proposed in subsection (a) ensure that an application is filed on a Commission prescribed form and that it is filed with Technical Permitting in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered complete and provide that an application will be administratively denied if it is still incomplete after the second supplemental submission. An applicant may request a hearing if an application is administratively denied. Proposed subsection (e) clarifies that filings are required to be made electronically if an electronic version or electronic filing system is available.

Proposed amendments in §4.213 expand the scope of subsection (b) to contemplate geologic work products and allow such products to be sealed by a professional engineer or geoscientist licensed in Texas. Similar amendments are proposed in §§4.231, 4.247, 4.263, and 4.279.

The Commission proposes to amend §4.214 to update the section, correct an error, and ensure consistent terms are used throughout Chapter 4.

Proposed amendments in §4.219 remove outdated language that is no longer applicable and update location requirements for on-lease commercial solid oil and gas waste recycling to be consistent with Commission practices. Amendments are also proposed to ensure that pits at an on-lease commercial solid oil and gas waste recycling facility are not located where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL); within a sensitive area as defined by §4.110 of this title (relating to Definitions); within 300 feet of surface water, domestic supply wells, or irrigation water wells; within 500 feet of any public water system wells or intakes; within 1,000 feet of a permanent residence, school, hospital, institution or church in existence at the time of the initial permitting; within 500 feet of a wetland; or within a 100-year floodplain. Proposed amendments also add required information to be included in a permit application for on-lease commercial solid oil and gas waste recycling.

In addition to minor amendments proposed to ensure consistent use of terms, proposed amendments in §4.221 require additional information to be included in the written report of the trail run such as a summary of the trial run and description of the process, the type of waste and description of the waste material, and copies of all chemical and geotechnical laboratory reports and chain of custody sheets for required samples.

The Commission proposes amendments to §4.224 to require an operator to include the facility identification number assigned by Technical Permitting in the operator's application for a permit renewal. Facility identification numbers will assist Technical Permitting in identifying facilities that may have several different types of permits.

Proposed amendments in §4.230 update requirements for filing an application for off-lease or centralized commercial solid oil and gas waste recycling. The amendments proposed in subsection (a) ensure that an application is filed on a Commission

prescribed form and that it is filed with Technical Permitting in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered complete and provide that an application will be administratively denied if it is still incomplete after the second supplemental submission. An applicant may request a hearing if an application is administratively denied. Proposed subsection (e) clarifies that filings are required to be made electronically if an electronic version or electronic filing system is available.

The Commission proposes §4.232 with amendments to require a United States Geological Survey topographic map or an equivalent topographic map to be included with the permit application. The map shall show the items proposed in subsection (a)(7)(A) through (a)(7)(K). New subsection (b) is proposed consistent with §4.219 to ensure pits at off-lease or centralized commercial solid oil and gas waste recycling are not located (1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL); (2) within a sensitive area as defined by §4.110 of this title (relating to Definitions); (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells; (4) within 500 feet of any public water system wells or intakes; (5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting; (6) within 500 feet of a wetland; or (7) within a 100-year floodplain. New subsections (c) and (d) are proposed to include language from §4.219 which specifies the factors the Commission will consider in assessing potential risk from the proposed recycling activities and clarifies that the siting requirements apply to conditions at the time equipment and tanks are placed. Similar siting requirements are proposed in §4.248 for stationary commercial solid oil and gas waste recycling, in §4.264 for off-lease commercial fluid recycling, and in §4.280 for stationary commercial fluid recycling.

Amendments proposed in §4.234 allow the Technical Permitting Section to waive the requirement that a permit application include a plan for the installation of monitoring wells. Similarly, the Commission proposes amendments in §4.241(b), §4.257(b), §4.273(b), and §4.289(b) to provide the Technical Permitting Section discretion to evaluate the facts of the specific permit application and determine whether certain requirements are appropriate.

The Commission proposes amendments to §4.238 to ensure notice requirements in Subchapter B are consistent with notice requirements proposed in new Subchapter A. The same amendments are proposed in §§4.254, 4.270, and 4.286.

Amendments proposed in §4.239 correct an error and update language to ensure consistency.

Amendments proposed in §4.240 remove outdated language that no longer applies and clarify certain factors the Commission will consider in assessing potential risk associated with an off-lease centralized commercial solid oil and gas waste recycling facility. Specifically, the Commission proposes to clarify that it will consider the distance to any surface water body, whether wet or dry.

Proposed amendments in §4.246 update requirements for filing an application for a stationary commercial solid oil and gas waste recycling facility. The amendments proposed in subsection (a) ensure that an application is filed on a Commission prescribed form and that it is filed with Technical Permitting in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered complete and provide that an application will be administratively denied if it is still incomplete after the second supplemental submission. An applicant may request a hearing if an application is administratively denied. Proposed subsection (e) clarifies that filings are required to be made electronically if an electronic version or electronic filing system is available.

Proposed amendments in §4.254 ensure that notice recipients receive instructions for filing notice electronically if the Commission implements an electronic means for filing protests.

Proposed amendments in §4.256 remove outdated language that is no longer applicable and update location requirements for a stationary commercial solid oil and gas waste recycling facility. The proposed amendments prohibit such facilities within 300 feet of surface water or public, domestic, or irrigation water wells.

Proposed amendments in §4.262 update requirements for filing an application for off-lease commercial recycling of fluid. The amendments proposed in subsection (a) ensure that an application is filed on a Commission prescribed form and that it is filed with Technical Permitting in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered complete. Proposed changes in subsection (c) clarify that after the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be to approve the application if it meets requirements and has not been protested, to refer the application to the Hearings Division if the application meets requirements and the application has been protested, or to deny the application if it does not meet the requirements. If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. Additional amendments are proposed in subsection (d) to implement House Bill 3516 (87th Legislature, 2021), which requires the Commission to approve or deny a complete application that does not include a request for an exception not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed. Further, if the Commission does not approve or deny the application before the 90th day, the permit application is considered approved, and the applicant may operate under the terms specified in the application for a period of one year. Proposed subsection (f) clarifies that filings are required to be made electronically if an electronic version or electronic filing system is available.

The Commission proposes amendments in §4.263 to incorporate additional requirements for engineering, geological, and other information submitted in an application for an off-lease commercial fluid recycling permit. Information filed with the application shall be sufficient to describe the subsurface geology and hydrogeology underlying the facility to a depth of at least 100 feet and evaluate the geology, hydrogeology, and proposed engineering design. Proposed subsections (b) and (c) specify how an operator may obtain information for engineering and geological site characterization, and how an operator may establish background concentrations if the operator intends to rely on those concentrations during operations or at closure.

Section 4.264 is proposed to be amended to include House Bill 3516's requirement that the Commission establish minimum siting standards for fluid recycling pits. The proposed amendments ensure that pits at off-lease commercial fluid recycling facilities are not located (1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL); (2) within a sensitive

area as defined by §4.110 of this title (relating to Definitions); (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells; (4) within 500 feet of any public water system wells or intakes; (5) within 1,000 feet of a permanent residence, school, hospital, institution or church in existence at the time of the initial permitting; (6) within 500 feet of a wetland; or (7) within a 100-year floodplain. Proposed amendments in §4.264(b)(7) require a United States Geological Survey topographic map or an equivalent topographic map to be included with the permit application. The map shall show the items proposed in subsection (b)(7)(A) through (b)(7)(K).

New language is proposed in §4.266 to incorporate requirements from House Bill 3516. Proposed subsection (a) establishes design and construction standards for pits at off-lease commercial fluid recycling facilities. Proposed subsection (a)(5) contains new liner requirements for such pits permitted after July 1, 2025. Proposed subsection (a)(6)-(a)(10) outline requirements for installation of liners and requirements to ensure liner integrity is maintained. Proposed subsection (a)(11) requires the pit to be designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. Proposed subsection (a)(12) requires pits to be designed to operate with a minimum two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event. Proposed subsection (b) requires tanks and treatment equipment to be located within a secondary containment system. Subsections (c) and (d) are renumbered due to the new requirements proposed in subsections (a) and (b). Minor updates are also proposed in subsection (c) and (d), including a new requirement that the permit application for off-lease commercial recycling of fluid include a plan for installing monitoring wells.

Amendments proposed in §4.268 add a requirement that the sampling plan submitted with the permit application ensures compliance with reuse requirements in the permit in addition to other permit conditions. Additionally, the application shall include a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas. Proposed amendments in §4.268(3) clarify that the required schedule for conducting periodic inspections shall include plans to inspect pits and liner systems, equipment, processing, and other waste storage areas.

Amendments are proposed in §4.269 to comply with House Bill 3516's requirement that the Commission adopt rules establishing uniform standards for estimating closure costs. The requirements for closure cost estimates (CCEs) in §4.269 are consistent with the CCE standards proposed for commercial facilities permitted under Subchapter A. The existing language in §4.269 is proposed to be amended as subsection (b) and contains amendments to include additional information in the permit application relating to closure, including information to address the requirements of §4.276 (relating to Minimum Permit Provisions for Closure), a plan to close all storage pits, treatment equipment, and associated piping and other storage or waste processing equipment, and information to show how the disturbed areas of the facility will be contoured and reseeded with geographically appropriate vegetation.

Proposed amendments in §4.271 correct an error and update terms to ensure consistency throughout the chapter.

The Commission proposes amendments in §4.272 to add a presumption that an applicant's proposed location for an off-lease commercial fluid recycling facility does not present an unreasonable risk of pollution or threat to public health or safety if the permit application complies with §4.264(a). The proposed amendments also remove outdated language that no longer applies, increase the required distance a facility may be located from surface water or certain water wells, and clarify certain factors the Commission will consider in assessing potential risk associated with an off-lease commercial fluid recycling facility. Specifically, the Commission proposes to clarify that it will consider the distance to any surface water body, whether wet or dry.

In addition to the minor updates described above, the Commission proposes to amend §4.273 to add new subsections (f), (g), and (h). Proposed subsection (f) limits where an operator may locate material excavated during construction of an off-lease commercial fluid recycling facility. Proposed subsection (g) contains signage, fencing, and security requirements. Proposed subsection (h) requires that any pit associated with an off-lease commercial fluid recycling facility permitted after July 1, 2025, shall comply with the requirements of §4.265(a).

The Commission proposes new requirements in §4.274(e) to prohibit accumulation of oil on top of produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through an electronic filing system.

New requirements for operating an off-lease commercial fluid recycling facility are proposed in §4.275(a) and (c). Existing language is renumbered as subsection (b). Proposed new requirements relate to monitoring, such as weekly inspections, inspection logs, and weekly monitoring of the leak detection system, and also contain standards for determining when the primary liner has failed and required steps if the primary liner is compromised. Proposed subsection (a)(6) prohibits the facility from receiving waste until groundwater monitoring wells are completed, developed, and sampled if groundwater monitoring wells are required. The Commission also proposes a figure in subsection (a)(6), which contains the required parameters for sampling. Proposed subsection (c) contains a quarterly reporting requirement.

New language is proposed in §4.276 to replace the minimum permit provisions for closure. Proposed new subsection (a)(1) requires an operator to notify the Commission within 60 days after cessation of operations. Proposed new subsection (a)(2) requires an operator to notify the Commission 45 days before the commencement of closure activities. Proposed subsection (b) requires that complete closure of a facility occur within one year from the date operations cease. An extension to the required one-year timeframe may be granted but shall not exceed one additional year. Proposed subsection (c) requires that the operator remove all fluids from treatment equipment and tanks within 60 days of the date operations cease and dispose of the contents in an authorized manner. All fluid from pits shall be removed within six months of the date operations cease. Proposed subsections (c)(3) through (c)(5) contain requirements for other wastes, liners, concrete areas and access roads, and visibly contaminated soils. Requirements for sampling and analysis of the area around and underneath each pit, processing area, and waste storage are proposed in subsection (d). The Commission also proposes a figure in subsection (d)(1), which contains the required parameters for sampling. Proposed subsection (e) requires that the facility be restored to a safe and stable condition that blends with the surrounding land, and the subsection includes requirements for replacing and contouring topsoil

and subsoils to achieve erosion control, long-term stability, and preservation of surface water flow patterns. The Commission also proposes to require the operator to re-vegetate the site as appropriate for the geographic region and include a planned water source to establish the re-vegetated areas. Proposed subsection (f) requires an operator to submit a closure report within 60 days of closure completion and specifies the contents of the report. Proposed subsection (g) states that the operator shall notify the Commission when closure and re-vegetation are complete and proposed subsection (h) states that the Commission will inspect the site to verify compliance with closure requirements. As stated in proposed subsection (g), financial security will not be released to the operator until all post-closure activities are approved by the Commission, including Technical Permitting and Site Remediation as applicable.

Proposed amendments in §4.278 update requirements for filing an application for a stationary commercial fluid recycling facility. The amendments proposed in subsection (a) ensure that an application is filed on a Commission prescribed form and that it is filed with Technical Permitting in addition to the district office. Amendments proposed in subsections (a) and (c) clarify when an application is considered complete. Proposed changes in subsection (c) clarify that after the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be to approve the application if it meets requirements and has not been protested, to refer the application to the Hearings Division if the application meets requirements and the application has been protested, or to deny the application if it does not meet the requirements. If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. Additional amendments are proposed in subsection (d) to implement the requirements of House Bill 3516 (87th Legislature, 2021), which require the Commission to approve or deny a complete application that does not include a request for an exception not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed. Further, if the Commission does not approve or deny the application before the 90th day, the permit application is considered approved, and the applicant may operate under the terms specified in the application for a period of one year. Proposed subsection (f) clarifies that filings are required to be made electronically if an electronic version or electronic filing system is available.

The Commission proposes amendments in §4.279 to incorporate additional requirements for engineering, geological, and other information submitted in an application for a stationary commercial fluid recycling permit. Information filed with the application shall be sufficient to describe the subsurface geology and hydrogeology underlying the facility to a depth of at least 100 feet and evaluate the geology, hydrogeology, and proposed engineering design. Proposed subsections (b) and (c) specify how an operator may obtain information for engineering and geological site characterization, and how an operator may establish background concentrations if the operator intends to rely on those concentrations during operations or at closure.

Section 4.280 is proposed to be amended to include House Bill 3516's requirement that the Commission establish minimum siting standards for fluid recycling pits. The proposed amendments ensure that pits at stationary commercial fluid recycling facilities are not located (1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL); (2) within a sensitive area as defined by §4.110 of this title (relating to Definitions); (3) within 300 feet of surface water, domestic supply wells, or irrigation water wells; (4) within 500 feet of any public water system wells or intakes; (5) within 1,000 feet of a permanent residence, school, hospital, institution or church in existence at the time of the initial permitting; (6) within 500 feet of a wetland; or (7) within a 100-year floodplain. Proposed amendments in §4.280(b)(7) require a United States Geological Survey topographic map or an equivalent topographic map to be included with the permit application. The map shall show the items proposed in subsection (b)(7)(A) through (b)(7)(K).

New language is proposed in §4.282 to incorporate requirements from House Bill 3516. Proposed subsection (a) establishes design and construction standards for pits at stationary commercial fluid recycling facilities. Proposed subsection (a)(5) contains new liner requirements for such pits permitted after July 1, 2025. Proposed subsection (a)(6)-(a)(10) outline requirements for installation of liners and requirements to ensure liner integrity is maintained. Proposed subsection (a)(11) requires the pit to be designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. Proposed subsection (a)(12) requires pits to be designed to operate with a minimum two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event. Proposed subsection (b) requires tanks and treatment equipment to be located within a secondary containment system. Subsections (c) and (d) are renumbered due to the new requirements proposed in subsections (a) and (b). Minor updates are also proposed in subsections (c) and (d).

Proposed amendments in §4.283 clarify that the required waste acceptance plan shall identify specific types of oil and gas wastes and provides examples such as hydraulic fracturing flowback fluid and produced water.

Amendments proposed in §4.284 add a requirement that the sampling plan submitted with the permit application ensures compliance with reuse requirements in the permit in addition to other permit conditions. Additionally, the application shall include a plan for monitoring groundwater based on the subsurface geology and hydrogeology, which may include the installation and sampling of monitoring wells, and a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas. Proposed amendments in §4.284(3) clarify that the required schedule for conducting periodic inspections shall include plans to inspect pits and liner systems, equipment, processing, and other waste storage areas.

Amendments proposed in §4.285 conform to proposed §4.269 and comply with House Bill 3516's requirement that the Commission adopt rules establishing uniform standards for estimating closure costs. The requirements for closure cost estimates (CCEs) are also consistent with the CCE standards proposed for commercial facilities permitted under Subchapter A. The existing language in §4.285 is proposed to be amended as subsection (b) and contains amendments to include additional information in the permit application relating to closure, including information to address the requirements of §4.292 (relating to Minimum Permit Provisions for Closure), a plan to close all storage pits, treatment equipment, and associated piping and other storage or waste processing equipment, and information to show how the disturbed areas of the facility will be contoured and reseeded with geographically appropriate vegetation.

The Commission proposes amendments in §4.288 to add a presumption that an applicant's proposed location for a stationary commercial fluid recycling facility does not present an unreasonable risk of pollution or threat to public health or safety if the permit application complies with §4.280(a). The proposed amendments also clarify certain factors the Commission will consider in assessing potential risk associated with a stationary commercial fluid recycling facility. Specifically, the Commission proposes to clarify that it will consider the distance to any surface water body, whether wet or dry.

In addition to the minor updates described above, the Commission proposes to amend §4.289 to add new subsections (f), (g), and (h). Proposed subsection (f) limits where an operator may locate material excavated during construction of a stationary commercial fluid recycling facility. Proposed subsection (g) contains signage, fencing, and security requirements. Proposed subsection (h) requires that any pit associated with a stationary commercial fluid recycling facility permitted after July 1, 2025, shall comply with §4.282(a).

The Commission proposes new requirements in §4.290(e) to prohibit accumulation of oil on top of produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through an electronic filing system.

New requirements for operating a stationary commercial fluid recycling facility are proposed in §4.291(a) and (c). Existing language is renumbered as subsection (b). Proposed new requirements relate to monitoring, such as weekly inspections, inspection logs, and weekly monitoring of the leak detection system, and also contain standards for determining when the primary liner has failed and required steps if the primary liner is compromised. Proposed subsection (a)(6) prohibits the facility from receiving waste until groundwater monitoring wells are completed, developed, and sampled if groundwater monitoring wells are required. The Commission also proposes a figure in subsection (a)(6), which contains the required parameters for sampling. Proposed subsection (c) contains a quarterly reporting requirement.

New language is proposed in §4.292 to replace the minimum permit provisions for closure. Proposed new subsection (a)(1) requires an operator to notify the Commission within 60 days after cessation of operations. Proposed new subsection (a)(2) requires an operator to notify the Commission 45 days before the commencement of closure activities. Proposed subsection (b) requires that complete closure of a facility occur within one year from the date operations cease. An extension to the required one-year timeframe may be granted but shall not exceed one additional year. Proposed subsection (c) requires that the operator remove all fluids from treatment equipment and tanks within 60 days of the date operations cease and dispose of the contents in an authorized manner. All fluid from pits shall be removed within six months of the date operations cease. Proposed subsections (c)(3) through (c)(5) contain requirements for other wastes, liners, concrete areas and access roads, and visibly contaminated soils. Requirements for sampling and analysis of the area around and underneath each pit, processing area, and waste storage are proposed in subsection (d). The Commission also proposes a figure in subsection (d)(1), which contains the required parameters for sampling. Proposed subsection (e) requires that the facility be restored to a safe and stable condition that blends with the surrounding land, and the subsection includes requirements for replacing and contouring topsoil and subsoils to achieve erosion control, long-term stability, and preservation of surface water flow patterns. The Commission also proposes to require the operator to re-vegetate the site as appropriate for the geographic region and include a planned water source to establish the re-vegetated areas. Proposed subsection (f) requires an operator to submit a closure report within 60 days of closure completion and specifies the contents of the report. Proposed subsection (g) states that the operator shall notify the Commission when closure and re-vegetation are complete and proposed subsection (h) states that the Commission will inspect the site to verify compliance with closure requirements. As stated in proposed subsection (g), financial security will not be released to the operator until all post-closure activities are approved by the Commission, including Technical Permitting and Site Remediation as applicable.

Finally, the Commission proposes new rules in Subchapter B, Division 7 (relating to Beneficial Use of Drill Cuttings) to satisfy requirements of Senate Bill 1541 (85th Legislature, 2017). Senate Bill 1541 instructed the Commission to adopt criteria for beneficial uses to ensure that a beneficial use of recycled drill cuttings is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without recycled drill cuttings. Proposed §4.301 includes requirements for treatment and recycling for beneficial use of drill cuttings. The requirements in §4.301 must be met in addition to the requirements of Divisions 3 and 4 of Subchapter B, which relate to Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, and Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities, respectively.

Proposed §4.301(b) states that a permit for the treatment and recycling for beneficial use of drill cuttings may be approved if the drill cuttings are used (1) in a legitimate commercial product for the construction of oil and gas lease pads or oil and gas lease roads; (2) in a legitimate commercial product for the construction of county roads; or (3) in a legitimate commercial product used as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or construction fill if the applicant can demonstrate the requirements proposed in subsection (b)(3)(A) and (B). Legitimate commercial product is defined in §4.204 as a product of a type customarily sold to the general public for a specific use and for which there is a demonstrated commercial market. Proposed §4.302 includes requirements for showing there is a demonstrated commercial market for the treated drill cuttings. Proposed subsection (b) of §4.302 contains a requirement for the applicant for a permit under Division 7 to perform a trial run that complies with proposed subsection (b)(1) through (b)(6). The Commission proposes §4.302(c)(1) to impose specific requirements for use of treated and recycled drill cuttings in a legitimate commercial product for the construction of oil and gas lease pads, oil and gas lease roads, and county roads. The Commission proposes a figure in subsection (c)(1), which contains required parameters for sampling of the treated drill cuttings.

Section 4.302(c)(2) imposes specific requirements for use of treated and recycled drill cuttings as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or other construction fill material as specified in §4.301(b). A figure is also proposed in subsection (c)(2) to list required parameters

for sampling of treated and recycled drill cuttings used for those purposes. The Commission proposes §4.302(c)(2)(E) to require an additional application to be submitted to the Technical Permitting Section after the section approves the initial permit to produce the treated drill cuttings. The separate application requests a letter of authority authorizing the application of the product to each specific project and location. Proposed §4.302(c)(2)(E)(i) through (v) list the requirements of the application requesting the letter of authority. Proposed §4.302(c)(3) allows the Commission discretion to require additional criteria prior to approving use of treated drill cuttings in other legitimate commercial products not listed in §4.302(c)(1) and (c)(2).

Paul Dubois, Director, Technical Permitting, Oil and Gas Division, has determined that for each year of the first five years that the proposed new rules and amendments will be in effect, there will be no foreseeable implications relating to cost or revenues for local governments as a result of enforcing or administering the new rules and amendments. There will, however, be a one-time cost of approximately $2 million for the Commission to create an online registration system for authorized pits. Other activities under the proposed rules, such as permitting and enforcing waste management activities, will be performed by existing personnel and within current budget constraints, resulting in no additional costs to the agency.

Mr. Dubois has determined that for each year of the first five years that the new rules and amendments will be in effect, there will be additional economic costs for some required to comply with the proposed new rules and amendments. However, these proposed new rules are generally consistent with current Commission practices, and the Commission finds that they are necessary to meet the existing "no pollution" standard incorporated into proposed new §4.101. Primary sources of new costs for operators include new siting restrictions, which may prohibit pits and disposal methods at certain locations, thereby requiring the use of above-ground tanks and, possibly, off-site disposal of certain wastes. In addition, new numerical criteria for the waste/soil mixture after authorized landfarming and authorized disposal of wastes by burial may result in the need for additional soil analysis. Compliance with the new requirements to use liners in certain authorized and permitted pits will result in increased costs. Also, new financial security requirements for produced water recycling pits represent a significant change from current §3.8.

Mr. Dubois has calculated the following estimates concerning potential changes in cost for specific activities in the amendments. Several of the proposed rules require new analytical requirements for soil, waste, or water media. For activities covered by proposed new §4.111, analytical costs for water condensate for benzene, toluene, ethylbenzene and xylene are estimated to be $35 per sample. Total petroleum hydrocarbons analysis of soil in a landfarm cell is estimated to be $45 per sample. Closure of Schedule B authorized pits in §4.115 may require analytical costs for soil of about $208 per sample. Analysis of groundwater samples from monitoring wells may cost about $198 per sample. The cost for soils analysis at a permitted landfarming or landtreating facility is estimated to be about $285 and $355 per sample, respectively. Although these sampling requirements and corresponding costs are new in Commission rules, they are currently required by Commission permits.

Groundwater monitoring wells are currently required by Commission guidance and permits when groundwater is expected to be encountered at depths of less than 100 feet below ground surface. This requirement is now proposed in §4.131 for all permitted pits, and in §4.115 for produced water recycling pits that do not have double synthetic liners and leak detection systems. Because produced water recycling pits are large, long-term infrastructure pits that may pose a risk to groundwater, the Commission understands the risks to groundwater warrant extra measures to monitor the potential for a release. The cost to drill and complete a 100-foot-deep groundwater monitoring well is estimated to be about $15,000 per well. However, most produced water recycling pits are built with double liners and leak detection systems and, therefore, would not be required to install groundwater monitoring wells.

Two types of pits that were authorized by §3.8 are no longer authorized by proposed §4.113--flare pits and basic sediment pits. An operator may choose to use these pits, but they must be permitted; the requirement to obtain a permit may introduce a cost to the operator. The Commission understands that flare pits are rarely used, and in many cases portable containers are used in lieu of basic sediment pits. In addition, §4.114 requires Schedule A authorized pits to be lined if groundwater is likely to be encountered less than 50 feet from the bottom of the pit. The liner must have a hydraulic conductivity that is 1.0 x 10-7 cm/sec or less, and the liner can be of natural or synthetic material. Synthetic liners cost from $0.50 per square foot. Many operators have informed the Commission that native soils meet the proposed hydraulic conductivity requirements in many instances, and operators install synthetic liners when needed as a current practice. It is not expected that this requirement will significantly affect operators' costs.

Mr. Dubois has determined that the proposed financial security requirements for produced water recycling pits in §4.115, as authorized by the Natural Resources Code §91.109(a), is a significant change, as operators of non-commercial fluid recycling pits are not required to carry additional financial security for these pits under the predecessor rule §3.8. Currently, Mr. Dubois estimates there are 588 non-commercial fluid recycling pits in the three districts that comprise the Permian Basin that would qualify as produced water recycling pits. These pits are operated by 85 different operators; 36 operators have one pit, and 18 operators have more than five pits. The average size of a non-commercial fluid recycling pit is about 500,000 bbl. The proposed rule provides operators flexibility, allowing several options for filing the appropriate financial security for the size and number of produced water recycling pits. An operator of one average pit of 500,000 bbl could file financial security in the amount of $1/bbl, or $500,000. Mr. Dubois estimates a bond of $500,000 would cost an operator about 3%, or $15,000, per year. In another scenario, an operator of 10 pits with a total capacity of 7,000,000 bbl could choose to file a maximum bond of $5,000,000, which, at an estimated cost of 3% would be $150,000 per year.

The proposed rules will set a permit term for reclamation plant permits. Currently, reclamation plant permits do not expire, but under the proposed rules these permits will expire in five years. There will likely be costs associated with permit renewal for stand-alone reclamation plants. However, the proposed rules also allow reclamation plant permits to be transferred to another operator, which is something that is not currently allowed in the governing rule, §3.57. Many reclamation plants are located at stationary treatment facilities with permits that renew every five years. In these cases, renewing the reclamation plant permit should not significantly affect the cost of permit renewal for the entire facility.

Activities covered by proposed new §4.121 are not anticipated to result in increased costs due to siting restrictions because the proposed construction, operation and closure provisions in the proposed rule are consistent with current Commission practice under §3.8 and the Commission's guidance documents published online in the Surface Waste Management Manual (https://www.rrc.texas.gov/oil-and-gas/publications-and-notices/manuals/surface-waste-management-manual/).

Mr. Dubois anticipates that any increase in cost as a result of the proposed new rules will be offset, at least in part, by more specific permit application requirements that should result in more complete and acceptable permit applications, which will reduce correspondence, time, and effort involved in completing and processing an application.

Mr. Dubois does not expect that changes to the rules in Subchapter B will result in significant cost changes. Instead, Mr. Dubois anticipates that the changes to §4.115 (relating to Schedule B Authorized Pits) will encourage the recycling of fluid oil and gas waste and may actually reduce industry's reliance upon, Subchapter B, Divisions 5 and 6 (relating to Requirements for Off-Lease Commercial Recycling of Fluid and Requirements for a Stationary Commercial Fluid Recycling Facility, respectively).

Mr. Dubois has determined that for each year of the first five years that the new rules and amendments will be in effect, the public benefit will be having more specific standards for waste management and the prevention of pollution from waste associated with oil and gas exploration, production, and development. These standards will aid operators in eliminating or reducing potential sources of pollution and are consistent with industry practices. In addition, the proposed rules will create more transparency in industry waste management operations, especially through the requirements to register authorized pits and the additional requirements for waste manifest documentation. Further, the proposed rules for notice of permit applications (§§4.125, 4.141, 4.238, 4.254, 4.270, and 4.286) increase from 15 to 30 days the period of time an affected person has to protest a permit application. Finally, the Commission finds that the costs of compliance are more than offset by the public benefit of enhanced protection of surface and subsurface water arising from implementation of the proposed new rules.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that, before adopting a rule that may have an adverse economic effect on rural communities, small businesses, or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of rural communities and small businesses subject to the proposed rule and project the economic impact of the rule on those stakeholders. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state, the analysis must consider the use of regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees. A "rural community" means a municipality with a population of less than 25,000. The Commission does not anticipate any impact on rural communities due to the proposed new rules and amendments.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission their number of employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons who drill and complete wells under the jurisdiction of the Railroad Commission will be classified as small businesses or micro-businesses, as those terms are defined. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas wells fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

Based on this information available to the Commission regarding oil and gas operators, the Commission has concluded that, of the businesses that could be affected by the proposed amendments, some may be classified as small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001. In addition, during development of the proposed rules, the Commission received input from many operators that consider themselves small businesses, at least compared to other larger oil and gas operators. These smaller operators strongly voiced concerns about initial changes that the Commission was considering regarding requirements for authorized pits at drilling and production locations. During October and November 2023, the Commission circulated a draft of these new rules and amendments for informal public comment. The draft proposed significant changes to its regulation of authorized pits that included new requirements for liners, groundwater monitoring, and closure. These proposed requirements placed additional burdens, and costs, on operators of all sizes. The smaller operators stated that the costs were disproportionate to the environmental and safety benefits offered by the proposed changes. Several of the smaller operators argued that there was little to no evidence of harm from existing practices. After due consideration, the Commission agreed that lessening the impact to smaller operators was warranted and the current proposed new rules and amendments incorporate changes for authorized pits to achieve that goal.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

The Commission reviewed the proposed amendments and found that they encompass certain individual actions identified in Coastal Coordination Act implementation rules (e.g., 31 TAC

§29.11). The proposed new rules are consistent with Coastal Management Program policies because the proposed new rules merely relocate existing practices and standards from §3.8 to proposed new §4.197 (relating to Consistency with the Texas Coastal Management Program). The only changes proposed in §4.197 are updates to ensure correct citation of Coastal Management Program Rules. Comments on consistency of the proposed rules with the Coastal Management Program may be submitted in addition to any substantive comments on the proposed new rules and amendments.

During the first five years that the rules would be in full effect, the proposed new rules and amendments would create new regulations - new rules are proposed which update the Commission's regulation of waste management. Though some of the requirements exist in current §3.8, the new rules also update and modify waste management requirements. The proposed new rules and amendments also increase responsibility for some persons under the Commission's jurisdiction. The proposed new rules and amendments would not increase or decrease the number of individuals subject to the rules. The activities and persons regulated under the proposed new rules and amendments were already required to comply with Commission regulations in §3.8, §3.57, and Subchapter B of Chapter 4. The proposed new rules and amendments do not create an increase in fees paid to the Commission, but do require additional financial security to be provided in accordance with Texas Natural Resources Code Section 91.109. Finally, the proposed new rules and amendments would not affect the state's economy and would not require a change in employee positions.

Comments on the proposed new rules and amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, September 30, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Dubois at (512) 463-6778. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the new rules and the amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §81.0531, which gives the Commission authority to assess penalties for violations of provisions of Title 3, Texas Natural Resources Code, which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under that title; Texas Natural Resources Code §§85.042, 85.202, and 86.042, which require the Commission to adopt rules to prevent waste of oil and gas; Texas Natural Resources Code §91.101, which gives the Commission authority to adopt and enforce rules and orders and issue permits to prevent pollution of surface water or subsurface water in the state; Texas Natural Resources Code §91.1017 (added by House Bill 2201, 87th Legislature), which requires the Commission to establish standards governing permissible locations for pits used by commercial oil and gas disposal facilities; Texas Natural Resources Code §122.004 (amended by House Bill 3516, 87th Legislature), which requires the Commission to adopt rules to govern the treatment and beneficial use of oil and gas waste, which shall encourage fluid oil and gas waste recycling for beneficial purposes and to establish standards for the issuance of permits for commercial recycling of oil and gas waste; and Texas Natural Resources Code §123.0015 (added by Senate Bill 1541, 85th Legislature), which requires the Commission to define "legitimate commercial product" and adopt criteria for beneficial uses of recycled drill cuttings; and Texas Water Code Chapter 29, which gives the Commission authority to adopt rules, issue permits, and assess penalties related to transporters of oil and gas waste.

SUBCHAPTER A. OIL AND GAS WASTE MANAGEMENT

DIVISION 1. GENERAL

16 TAC §§4.101 - 4.104, 4.106 - 4.109

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.101. Prevention of Pollution.

(a) No person conducting activities subject to regulation by the Railroad Commission of Texas may cause or allow pollution of surface or subsurface water in the state.

(b) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting, operating, monitoring, and closure standards and requirements for the management of wastes associated with activities governed by the Commission including those governed under:

(1) Texas Natural Resources Code Title 3, Subtitle B;

(2) Texas Natural Resources Code Title 3, Subtitle D, Chapters 121-123;

(3) Texas Natural Resources Code Title 5;

(4) Texas Health and Safety Code Chapter 382, Subchapter K; and

(5) Texas Water Code Chapters 26, 27 and 29.

(c) Other wastes described in subsection (b) of this section are included when this subchapter refers to oil and gas waste(s) and may

be managed in accordance with the provisions of this subchapter at facilities authorized under this subchapter provided the wastes are non-hazardous and chemically and physically similar to oil and gas wastes.

(d) Used oil as defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) shall be managed in accordance with the provisions of 40 Code of Federal Regulations (CFR), Part 279.

§4.102. Responsibility for Oil and Gas Wastes.

(a) The generator of oil and gas waste is responsible for characterizing the waste.

(1) The generator may use process knowledge to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110 of this title (relating to Definitions).

(2) Laboratory analysis of waste may be required for waste generated at a commercial facility, as that term is defined in §4.110 of this title, or when waste is transferred from one commercial facility to another.

(3) The generator of an oil and gas waste that is not exempt from regulation under Subtitle C of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 USC §6901, et seq. as described in 40 CFR §261.4(b), shall determine if such waste is a hazardous oil and gas waste by applying process knowledge of the hazard characteristics of the waste in light of the materials or processes used or by testing the waste.

(b) No person, operator, generator, receiver, or carrier may utilize the services of a carrier to transport oil and gas wastes if the carrier is required to have a permit to transport such wastes but does not have a valid permit.

(c) No person, operator, generator, or carrier may utilize the services of a receiver to manage oil and gas wastes if the receiver is required to have a permit to manage such wastes but does not have such a permit.

(d) No receiver may utilize the services of a second receiver to manage oil and gas wastes if the second receiver is required to have a permit to manage such wastes but does not have a valid permit.

(e) Any person who utilizes the services of a carrier or receiver is under a duty to determine that the carrier or receiver holds the appropriate authority from the Commission to manage or transport oil and gas wastes.

(f) No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:

(1) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and

(2) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.

(g) No person may manage oil and gas wastes in a manner that violates Commission rules.

(h) Pursuant to Texas Natural Resources Code §91.142(h), any person, operator, permittee, or entity conducting activities under the jurisdiction of the Commission shall notify the Commission if it files for bankruptcy.

§4.103. Prohibited Waste Management Methods.

(a) Unless authorized by this subchapter, no person may manage oil and gas wastes without obtaining a permit to manage such wastes, except for the following methods:

(1) as authorized by §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes);

(2) as authorized by §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste); or

(3) by underground injection for disposal permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(b) The discharge of oil and gas waste into any surface water defined under §4.110 of this title (relating to Definitions) is prohibited unless such discharge is authorized by and conducted in accordance with a Texas Pollutant Discharge Elimination System (TPDES) permit or authority issued by the Texas Commission on Environmental Quality (TCEQ) or another regulatory agency with jurisdiction over discharge of oil and gas wastes.

(c) No person may maintain or use any pit for storage of oil, oil products, or oil by-products.

(d) Except as authorized by this subchapter, no person may maintain or use any pit for storage of oil field fluids or for storage or disposal of oil and gas wastes without obtaining a permit to maintain or use the pit.

(e) Except as expressly provided by §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)), no person may dispose of oil and gas wastes at a facility not under the jurisdiction of the Commission unless the Director expressly authorizes such disposal in writing.

(f) Except for those recycling methods authorized for certain wastes by §4.112 of this title (relating to Authorized Recycling), no person may recycle any oil and gas wastes by any method without obtaining a permit.

§4.104. Coordination Between the Commission and Other Regulatory Agencies.

(a) The Commission and TCEQ have adopted by rule a Memorandum of Understanding stating how the agencies will implement the division of jurisdiction over wastes. The MOU is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

(b) Activities authorized or permitted by this subchapter may be subject to rules and regulations promulgated by the United States Environmental Protection Agency under the federal Clean Air Act or the TCEQ under the Texas Clean Air Act. The applicant shall obtain any required authority from other regulatory agencies prior to the receipt of waste authorized under this subchapter.

§4.106. Fees.

Applications submitted under this subchapter may be subject to a fee and surcharge pursuant to §3.78 of this title (relating to Fees and Financial Security Requirements).

§4.107. Penalties.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the

enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement without cause. Operators may correct violations at a facility with approval of Commission staff before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the facility's history of previous violations;

(2) the operator's history of previous violations;

(3) the seriousness of the violation;

(4) any hazard to the health or safety of the public; and

(5) the demonstrated good faith of the operator charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.
Figure: 16 TAC §4.107(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the operator charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.
Figure: 16 TAC §4.107(f)

(g) Penalty enhancements for certain violators. For violations in which the operator charged has a history of prior violations within seven years of the current enforcement action at any facility regulated by the Commission, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §4.107(g)
Figure 2: 16 TAC §4.107(g)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the operator charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the operator charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §4.107(j)

§4.108. Electronic Filing Requirements.

(a) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system. The person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

(b) The Commission deems a person that files electronically or on whose behalf is filed electronically any form, or hard copy if the Commission has not approved a digital format, as of the time of filing, to have knowledge of and to be responsible for the information filed.

(c) All electronic filings that a person submits or that are submitted on behalf of a person shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(d) The Commission may provide notice electronically to a person, and may provide a person the ability to confirm electronically, the Commission's receipt of a filing submitted electronically by or on behalf of that person.

(e) The Commission deems that the signature of a person's authorized representative appears on each filing submitted electronically by or on behalf of the person, as if this signature actually appears, as of the time the filing is submitted electronically to the Commission.

(f) The Commission holds each person responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that a person files or that are filed on the person's behalf. The Commission charges each person with the obligation to review and correct, if necessary, all forms, information, or data that a person files or that are filed on the person's behalf.

§4.109. Exceptions.

(a) An applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested. The following provisions are ineligible for exceptions:

(1) the requirements related to financial security found in §§4.122, 4.140, 4.150, and 4.171 of this title (relating to Permit Renewals, Transfers, and Amendments; Additional Requirements for Commercial Facilities; Additional Requirements Applicable to Permitted Pits; and Standard Permit Provisions, respectively);

(2) the notice requirements found in §§4.122, 4.123, 4.125 and 4.141 of this title (relating to Permit Renewals, Transfers, and Amendments; Permit Modification, Suspension, and Termination; Notice and Opportunity to Protest; and Additional Notice Requirements for Commercial Facilities, respectively); and

(3) the requirements related to sampling and analysis found in §§4.124, 4.129, 4.131, 4.132, 4.163, and 4.164 of this title (relating to Requirements Applicable to All Permit Applications and Reports; Operation; Monitoring; Closure; Monitoring; and Closure, respectively).

(b) Each application for an exception to a rule in this subchapter shall be accompanied by the exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial Security Requirements).

(c) Notwithstanding subsections (a) and (b) of this section, until July 1, 2026 the director may grant special exceptions solely for the purpose of issuing permits for waste management units that were authorized pits pursuant to §3.8 of this title (relating to Water Protection) prior to July 1, 2025 but that are no longer authorized pursuant to this subchapter.

(d) The Director shall review each written request for an exception on a case-by-case basis.

(e) If the Director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but shall not use the requested alternative until the alternative is approved by the Commission.

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

Filed with the Office of the Secretary of State on August 16, 2024.

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Earliest possible date of adoption: September 29, 2024

For further information, please call: (512) 475-1295

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DIVISION 2. DEFINITIONS

16 TAC §4.110

Statutory authority: Texas Natural Resources Code, § §81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.110. Definitions.

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

(1) 25-year, 24-hour rainfall event--The maximum 24-hour precipitation event, in inches, with a probable recurrence interval of once in 25 years, as defined by the National Weather Service and published by the National Oceanic and Atmospheric Administration for the county in which the waste management activity is occurring.

(2) 100-year flood--A flood that has a 1.0% or greater chance of occurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(3) 100-year flood plain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood, as determined from maps or other data from the U.S. Army Corps of Engineers or the Federal Emergency Management Agency (FEMA).

(4) Action leakage rate--The calculated volume of waste liquid that has bypassed the primary liner into the leak detection layer at a rate of gallons per acre per day that if exceeded indicates failure of the primary liner.

(5) Active cell--A waste management unit that has received oil and gas waste and has not completed closure.

(6) Active life--The period of time beginning when a waste management unit first receives waste and ending when closure of the waste management unit is complete.

(7) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, injection wells, disposal wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including activities associated with:

(i) the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission to regulate the production of oil or gas or geothermal resources;

(iii) the drilling of seismic holes and core holes subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources;

(iv) gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(v) any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.173;

(vi) any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.201; and

(vii) the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the management of oil and gas waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended (42 USC §6901, et seq.).

(8) Affected person--A person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public or a competitor.

(9) Alluvium and Quaternary sand and gravel--Unconsolidated sediments consisting of gravel, sand, and/or silt, which typically exhibit high porosity and high permeability.

(10) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(11) ASTM--ASTM International (successor to the American Society for Testing and Materials).

(12) Authorized--An activity that is permitted or allowed by a rule.

(13) Authorized pit--A reserve pit, mud circulation pit, completion/workover pit, fresh makeup water pit, fresh mining water pit, water condensate pit, or produced water recycling pit that is permitted by rule and described and operated in accordance with Division 3 of this subchapter (relating to Operations Authorized by Rule).

(14) Basic sediment--A mixture of crude oil or lease condensate, water, sediment, and other substances or hydrocarbon-bearing materials that are concentrated at the bottom of tanks and pipeline storage tanks (also referred to as "basic sediment and water" or "tank bottoms").

(15) Brine pit--A pit used for storage of brine in connection with the solution mining of brine, the operation of an underground hydrocarbon storage facility, or other activities associated with oil and gas exploration, development, storage or production that involve the creation or use of a salt cavern.

(16) Buffer zone--The minimum distance allowed between a waste management unit and another feature, such as a property boundary, surface water, or water well.

(17) Carrier--A person who is permitted to transport oil and gas wastes. A carrier of another person's oil and gas wastes may be a generator of its own oil and gas wastes. A permitted waste hauler is a carrier.

(18) Coastal Management Program (CMP) rules--The enforceable rules of the Texas Coastal Management Program codified at 31 Texas Administrative Code Chapters 26 through 29.

(19) Coastal Natural Resource Area (CNRA)--One of the following areas defined in Texas Natural Resources Code §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.

(20) Coastal waters--Waters along the coast under the jurisdiction of the State of Texas, including tidal influence and waters of the open Gulf of Mexico.

(21) Coastal zone--The area within the boundary established in 31 Texas Administrative Code §27.1 (relating to Coastal Management Program Boundary).

(22) Commercial facility--A facility permitted under Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations), whose owner or operator receives compensation from others for the management of oil field fluids or oil and gas wastes and whose primary business purpose is to provide these services for compensation.

(23) Commission--The Railroad Commission of Texas.

(24) Completion/workover pit--A pit used for storage or disposal of spent completion fluids and solids, workover fluids and solids, and drilling fluids and solids, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed, worked over, or plugged.

(25) Contact stormwater--Stormwater that has come into contact with any amount of oil and gas wastes or areas that are permitted to contain oil and gas wastes, regardless of whether oil and gas waste is currently being contained in the area. See also "Non-contact stormwater" and "Stormwater."

(26) Container--A means of primary containment used for the management of oil and gas waste such as a pit, sump, tank, vessel, truck, barge, or other receptacle.

(27) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code §33.203.

(28) Dewater--To remove free liquids.

(29) Director--The Director of the Oil and Gas Division or the Director's delegate.

(30) Discharge--To allow a liquid, gas, or other substance to flow out from where it has been confined.

(31) Disposal--The act of conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, dumping, placing, abandoning, landfarming, allowing seepage, or causing or allow-

ing any such act of disposal of any oil field fluid, oil and gas waste, or other substance or material subject to regulation by the Commission.

(32) Disposal pit--A pit used for the permanent storage of oil and gas waste.

(33) Distilled water--Water that has been purified by being heated to a vapor form and then condensed into another container as liquid water that is essentially free of all solutes.

(34) District Director--The Director of the Commission district where the management, disposal, or recycling of oil and gas wastes is located or the District Director's delegate.

(35) District Office--The Commission District Office in the Commission district where the waste management, disposal, and/or recycling is located.

(36) Drill cuttings--Bits of rock or soil cut from a subsurface formation by a drill bit during the process of drilling an oil or gas well and lifted to the surface by means of the circulation of drilling mud. The term includes any associated sand, silt, drilling fluid, spent completion fluid, workover fluid, debris, water, brine, oil scum, paraffin, or other material cleaned out of the wellbore.

(37) Electrical conductivity--A numerical expression of the ability of a material to carry a current, normally expressed in millimhos/centimeter (the reciprocal of resistivity). It is frequently used to estimate salinity in terms of total dissolved solids. In soil analysis, electrical conductivity may be used as one measure to evaluate a soil's ability to sustain plant growth.

(38) Environmental Protection Agency (EPA)--The United States Environmental Protection Agency.

(39) Facility--A site that shares a common area, common access, and a common purpose where oil field fluids or oil and gas wastes are managed. It may include one or more waste management units, may include permitted or authorized activities, and may be designated as either commercial or non-commercial.

(40) Freeboard--The vertical distance between the top of a pit or berm and the highest point of the contents of the pit or berm.

(41) Fresh makeup water pit--A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of fresh water used to make up drilling fluid or completion fluid.

(42) Fresh water--The best quality of the surface or subsurface water, at any individual operational location, available for domestic or agricultural use within a one-mile radius of the location, or 3,000 milligrams per liter of total dissolved solids, whichever is less.

(43) Fresh mining water pit--A pit used in conjunction with a brine mining injection well for storage of fresh water used for solution mining of brine.

(44) Generator--A person that generates oil and gas wastes.

(45) Geomembrane--An effectively impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(46) Geotextile--A sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes, or to provide structural support.

(47) Groundwater--Subsurface water in a zone of saturation.

(48) Hydrocarbon condensate--Hydrocarbon liquids that condense from a natural gas stream.

(49) Inert oil and gas waste--Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, synthetic liners, fiberglass, soil, dirt, clay, sand, gravel, brick, and trash. The term excludes asbestos or asbestos-containing waste, and oil and gas naturally occurring radioactive material (NORM) waste.

(50) Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(51) Land application--An authorized or permitted waste management practice in which effluent that does not meet the standards found in the figure in §4.111(a) of this title (relating to Authorized Disposal Methods for Certain Wastes) and is a low-chloride produced water may be applied to a controlled area of the ground surface via sprinkler or other irrigation systems without tilling or mixing with the native soils.

(52) Landfarming--An authorized or permitted waste management practice in which low chloride, water-based drilling fluids, or oil and gas wastes are mixed with, or tilled into, the native soils in such a manner that the waste will not migrate from the authorized or permitted landfarming cell.

(53) Landfarming cell--The bermed area into which oil and gas waste is applied to the land and includes landfarming and landtreatment cells.

(54) Landtreating--An authorized or permitted waste management practice in which oil-based drilling fluids, oil impacted soils, and oil and gas wastes are mixed with or tilled into the native soil to degrade oil, grease, or other organic wastes in such a manner that the waste will not migrate from the authorized or permitted landtreatment cell.

(55) Leak detection system--A system used to detect leaks below the liner of pits.

(56) Liner--A continuous layer of impervious materials, synthetic or natural, beneath and on the sides of a pit that restricts or prevents the downward or lateral release or migration of oilfield fluids or oil and gas wastes.

(57) Manage or management of oil and gas waste--The receiving, handling, storage, treatment, processing, transportation, reclamation, recycling, and/or disposal of oil and gas wastes.

(58) Manifest--An electronic or paper document used to track shipments of oil and gas waste that is authenticated by all parties (the generator, carrier, and receiver) in the transfer of oil and gas waste, and contains information on the waste type, source, quantity, and instructions for handling.

(59) Mined brine--Brine produced from a brine mining injection well by solution of subsurface salt formations. The term does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.

(60) Mud circulation pit--A pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.

(61) Natural gas or natural gas liquids processing plant--A plant whose primary function is the extraction of natural gas liquids from field gas, the fractionation of natural gas liquids, and the production of pipeline-quality gas for transportation by a natural gas transmission pipeline. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall be considered a component of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids.

(62) Naturally occurring radioactive material (NORM)--Naturally occurring materials not regulated under the Atomic Energy Act whose radionuclide concentrations have been increased by or as a result of human practices. NORM does not include the natural radioactivity of rocks or soils, or background radiation, but instead refers to materials whose radioactivity is concentrated by controllable practices (or by past human practices). NORM does not include source, byproduct, or special nuclear material.

(63) Non-commercial facility--A facility authorized or permitted under this chapter that is not a commercial facility as defined in paragraph (22) of this section.

(64) Non-contact stormwater--Stormwater that, by design or direction, has not come into contact with any areas containing oil or gas wastes or any areas permitted to contain oil and gas wastes. See also "Contact stormwater" and "Stormwater."

(65) Oil and gas NORM waste--Any solid, liquid, or gaseous material or combination of materials (excluding source material, special nuclear material, and by-product material) that in its natural physical state spontaneously emits radiation, is discarded or unwanted, constitutes, is contained in, or has contaminated oil and gas waste, and prior to treatment or processing that reduces the radioactivity concentration, exceeds exemption criteria specified in 25 Texas Administrative Code §289.259(d) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

(66) Oil and gas wastes--As defined in Texas Natural Resources Code §91.1011, the term:

(A) means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(i) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Texas Natural Resources Code §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Texas Natural Resources Code §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(B) includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material; but

(C) does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(67) Oil field fluids--Fluid used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The term "oil field fluids" includes, but is not limited to, drilling fluids, completion fluids, surfactants, and other chemicals used in association with oil and gas activities, but does not include produced oil, condensate, gas, or water that is not oil and gas waste. Oil field fluids no longer used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, and oil field fluids that have been abandoned, are considered an oil and gas waste.

(68) Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the Commission's rules and regulations in any acts subject to the Commission's jurisdiction including the permitting, physical operation, closure, and post-closure activities of a facility regulated under this chapter, or such person's authorized representative.

(69) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.

(70) Person--A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(71) Pit--A container for which earthen materials provide structure, shape, and foundation support. A container that includes a concrete floor or sidewall is a pit. A tank, as defined in paragraph (90) of this section, is not a pit.

(72) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(73) Primary containment--Measures put into place to confine, control, and secure a material to a defined space. See also "Container."

(74) Produced water recycling--The recycling of produced water and other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production activities.

(75) Produced water recycling facility--A facility at which produced water recycling activities are conducted. The facility may include one or more produced water recycling pits and ancillary equip-

ment including tanks, piping, treatment systems, and other equipment that are used for produced water recycling.

(76) Produced water recycling pit--An authorized pit used to manage produced water and other aqueous fluid wastes produced from a wellbore during oil and gas exploration and production activities being recycled and treated fluids.

(77) Public area--A dwelling, place of business, church, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can expect to be populated.

(78) Public water system--A source of potable water for the public's use that has at least 15 service connections or serves at least 25 individuals for at least 60 days out of the year. This includes people that live in houses served by a system, but can also include employees, customers, or students.

(79) Pressure maintenance plant or repressurizing plant--A plant for processing natural gas for reinjection for reservoir pressure maintenance or repressurizing in a natural gas recycling project. These terms do not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(80) Receiver--A person who manages oil and gas waste that is received from a generator or carrier. A receiver of another operator's oil and gas wastes may be a generator of its own oil and gas wastes.

(81) Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.

(82) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use. This term also includes the actual use or re-use of oil and gas wastes. For the purpose of this chapter, the term "recycle" does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(83) Reserve pit--A pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.

(84) Secondary containment--Measures put into place to contain spills and prevent them from contaminating the surrounding area, such as dikes, berms, or other barriers.

(85) Sensitive area--An area defined by the presence of factors, whether one or more, that make it vulnerable to pollution from oil and gas surface waste management activities. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, water wells, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas.

(86) Solid oil and gas waste--Oil and gas waste that is determined not to contain "free liquids" as defined by EPA Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(87) Storage or storing--The keeping, holding, accumulating, or aggregating of oil and gas waste for a temporary or indeterminate period.

(88) Stormwater--Water that falls onto and flows over the ground surface and does not infiltrate into the soil. See also "Contact stormwater" and "Non-contact stormwater."

(89) Surface and subsurface water--Groundwater, percolating, perched or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh, saline, or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(90) Tank--A rigid, non-concrete, non-earthen container that provides its own structure and shape.

(91) TCEQ--The Texas Commission on Environmental Quality or its successor agencies.

(92) Technical Permitting Section or Technical Permitting--The Technical Permitting Section within the Oil and Gas Division of the Railroad Commission of Texas, located in Austin, Texas.

(93) Treated fluid--Fluid oil and gas waste that has been treated to remove impurities such that the fluid can be reused or recycled. Treated fluid that is abandoned or disposed of is classified as an oil and gas waste. Once treated fluid is reused or recycled, it is not classified as an oil and gas waste.

(94) Unified Soil Classification System--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(95) Waste management unit--A container, structure, pad, cell, or area in or on which oil and gas wastes are managed.

(96) Water condensate pit--A pit used for storage or disposal of water condensed from natural gas.

(97) Wetland--An area including a swamp, marsh, bog, prairie pothole, or similar area having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland for which construction or creation commenced on or after August 28, 1989, and which was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation which has been approved or requested by soil and water conservation districts (Texas Water Code §11.502.).

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. OPERATIONS AUTHORIZED BY RULE

16 TAC §§4.111 - 4.115

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.111. Authorized Disposal Methods for Certain Wastes.

(a) Water condensate. A person may, without a permit, dispose of by land application water which has been condensed from natural gas and collected at gas pipeline drip stations or gas compressor stations. The disposal is authorized provided:

(1) the disposal is not a discharge to surface water and the waste will not reach surface water;

(2) prior to each land application event, representative samples are collected and analyzed for the list of parameters in the figure in this subsection;

(3) analytical methods used are documented and all parameters are in mg/liter unless otherwise specified;

(4) analyte concentrations do not exceed the concentration limits listed in the figure in this subsection;

(5) the water condensate is applied to the ground surface in such a manner that it will not leave the boundaries of the property; and

(6) the area where the water condensate will be land applied is at least 500 feet from a public water system well or intake, and 300 feet from any surface water or residential or irrigation water supply well.

Figure: 16 TAC §4.111(a)(6)

(b) Inert oil and gas wastes. A person may, without a permit, dispose of inert oil and gas wastes on the property on which the waste was generated provided disposal is by a method other than:

(1) disposal into surface water; or

(2) a method that may present other health and safety hazards such as burning.

(c) Low chloride water-based drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming: water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; drill cuttings, sands, and silts obtained while using water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site. The disposal is authorized in accordance with the following:

(1) the waste is landfarmed on the same lease or unit, easement, or right-of-way where it was generated;

(2) the person has obtained written permission to landfarm the waste from the surface owner of the area to be landfarmed;

(3) the slope of the area to be landfarmed is three percent or less, or any greater slope is approved in writing by the District Director;

(4) the area where the waste will be landfarmed is at least 500 feet from a public water system well or intake, 300 feet from any surface water or other types of wells, and in an area with subsurface water at depths of more than 100 feet below land surface;

(5) any accumulation of hydrocarbons on top of the waste to be landfarmed is removed from the waste prior to spreading;

(6) the waste to be landfarmed has a pH of not less than six nor more than nine standard units;

(7) the waste is spread evenly and in a manner that will not result in a depth of greater than six inches of solids or six inches of fluids (six inches over an acre = 5,172 barrels/acre);

(8) the waste is spread in a manner that will not result in pooling, ponding, or runoff of the waste and the waste is then disked into the soil as necessary to distribute the waste within the soil;

(9) immediately after landfarming the waste, the waste-soil mixture has an electrical conductivity that does not exceed the background level for undisturbed soil established before landfarm activities commenced or four millimhos/centimeter, whichever is greater; and

(10) immediately after landfarming the waste, the waste-soil mixture has a total petroleum hydrocarbon content of one percent or less by weight when sampled using EPA SW-846 418.1 or equivalent.

(d) Other oil and gas wastes. A person may, without a permit, dispose of the following oil and gas wastes by burial in a reserve pit or a completion/workover pit: solids from dewatered drilling mud and fluids generated during well drilling, completion, and workover activities, including drill cuttings, sand, silt, paraffin, and debris. The disposal is authorized provided:

(1) the wastes are disposed of at the same well site where they are generated;

(2) the wastes are dewatered;

(3) the burial complies with the closure requirements for authorized pits pursuant to §4.114 of this title (relating to Schedule A Authorized Pits); and

(4) the operator maintains documentation demonstrating closure requirements have been met. The operator shall maintain these records for at least three years from the date of closure and provide copies of these records to the Commission upon request.

§4.112. Authorized Recycling.

(a) Produced water recycling is authorized if:

(1) treated fluid is recycled for use in drilling operations, completion operations, hydraulic fracturing operations, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well;

(2) produced water recycling pits are operated in accordance with §4.113 and §4.115 of this title (relating to Authorized Pits, and Schedule B Authorized Pits); and

(3) recycling is limited to oil and gas waste; commingling of treated oil and gas waste with other treated fluid from sources out-

side of the Commission's jurisdiction may only be authorized at the Director's discretion.

(b) Treated fluid may be reused in any other manner without a permit from the Commission provided the reuse occurs pursuant to a permit issued by another state or federal agency.

(c) Fluid that meets the requirements of subsection (a) or (b) of this section is a recyclable product.

§4.113. Authorized Pits.

(a) An operator may, without a permit, maintain or use reserve pits, mud circulation pits, completion/workover pits, fresh makeup water pits, fresh mining water pits, and water condensate pits if the pit complies with this division.

(b) Unless otherwise approved by the District Director after a showing that the contents of the pit will be confined in the pit at all times, all authorized pits shall be constructed, used, operated, and maintained at all times outside of a 100-year flood plain as that term is defined in §4.110 of this title (relating to Definitions). The operator may request a hearing if the District Director denies approval of the request to construct an authorized pit within a 100-year flood plain.

(c) An authorized pit that was constructed pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to July 1, 2025, is authorized to continue to operate subject to the following:

(1) Authorized pits that cause pollution shall be brought into compliance with or closed according to this division.

(2) By July 1, 2026, basic sediment pits, flare pits, and other unpermitted pits not authorized by this section shall be:

(A) permitted according to this subchapter; or

(B) closed according to this division.

(3) By January 1, 2026, an operator of a non-commercial fluid recycling pit shall:

(A) register the pit as a produced water recycling pit according to subsection (e) of this section and file the required financial security according to §4.115 of this tile (relating to Schedule B Authorized Pits); or

(B) close the pit according to this division.

(4) At the time of closure, authorized pits shall be closed according to this division.

(d) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit authorized by this section, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours of discovery of the release.

(e) The operator shall register all authorized pits with the Commission.

(1) The Director shall establish a registration system for authorized pits by July 1, 2025.

(A) New authorized pits constructed after July 1, 2025 shall register by mailing or emailing to Technical Permitting the registration form established by the Commission.

(B) By July 1, 2027, the Director will establish an online system for operators to register and for the Commission to maintain a record of authorized pits.

(C) The operator of an authorized pit shall register the pit using the online registration system once it is established by the Director.

(2) New pits shall be registered prior to operation of the pit.

(3) Authorized pits existing on July 1, 2025, shall be registered or closed within one year.

(4) Authorized pit registration shall include:

(A) the type of pit;

(B) the location of the pit including the lease name and number, drilling permit number or other Commission-issued identifier, and the latitude and longitude coordinates using the 1983 North American Datum (NAD);

(C) the pit dimensions and capacity in barrels;

(D) the expected depth to groundwater from the bottom of the pit; and

(E) for produced water recycling pits, the financial security required by §4.115 of this title.

(5) An authorized pit may be designated as more than one type of pit provided it meets the requirements in this section for each type of pit. An authorized pit of one type may be redesignated as an authorized pit of another type (for example, a reserve pit may be redesignated as a completion pit) provided the pit was constructed to meet the design and construction requirements of the pit type to which it will be redesignated.

§4.114. Schedule A Authorized Pits.

Schedule A authorized pits include reserve pits, mud circulation pits, completion/workover pits, freshwater makeup pits, fresh mining water pits, and water condensate pits.

(1) Schedule A pit contents.

(A) Reserve pits and mud circulation pits. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes other than the following:

(i) drilling fluids that are freshwater base, saltwater base, or oil base;

(ii) drill cuttings, sands, and silts separated from the circulating drilling fluids;

(iii) wash water used for cleaning drill pipe and other equipment at the well site;

(iv) drill stem test fluids; and

(v) blowout preventer test fluids.

(B) Completion/workover pits. A person shall not deposit or cause to be deposited into a completion/workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.

(C) Fresh makeup water pits. A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than fresh water used to make up drilling fluid or hydraulic fracturing fluid.

(D) Fresh mining water pits. A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than water used for solution mining of brine.

(E) Water condensate pits. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.

(2) Schedule A pit construction.

(A) All pits shall be designed, constructed, and maintained to prevent any migration of materials from the pit into adjacent subsurface soils, groundwater, or surface water at any time during the life of the pit.

(B) Reserve pits, mud circulation pits, and completion/workover pits located in areas where groundwater is present within 50 feet of the bottom of the pit shall be lined.

(i) All liners shall have a hydraulic conductivity that is 1.0 x 10-7 cm/sec or less.

(ii) A liner may be constructed of either natural or synthetic materials.

(3) Schedule A pit closure.

(A) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule.

(i) Reserve pits and mud circulation pits which contain fluids with a chloride concentration of 6,100 mg/liter or less and fresh makeup water pits shall be dewatered, backfilled, and compacted within one year of cessation of drilling operations.

(ii) Reserve pits and mud circulation pits which contain fluids with a chloride concentration in excess of 6,100 mg/liter shall be dewatered within 30 days and backfilled and compacted within one year of cessation of drilling operations.

(iii) All completion/workover pits used when completing a well shall be dewatered within 30 days of well completion and backfilled and compacted within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days of completion of workover operations and backfilled and compacted within 120 days of completion of workover operations.

(iv) Fresh mining water pits and water condensate pits shall be dewatered, backfilled, and compacted within 120 days of final cessation of use of the pit.

(v) If a person constructs a sectioned reserve pit, each section of the pit shall be considered a separate pit for determining when a particular section shall be dewatered.

(B) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, or completion/workover pit shall remain responsible for dewatering, backfilling, and compacting the pit within the time prescribed by subparagraph (A) of this paragraph, even if the time allowed for backfilling the pit extends beyond the expiration date or transfer date of the lease covering the land where the pit is located.

(C) The Director may require that a person who uses or maintains a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, or water condensate pit dewater and backfill the pit sooner than the time prescribed by subparagraph (A) of this paragraph if the Director determines that oil and gas wastes or oil field fluids are likely to escape from the pit or that the pit is being used for improper storage or disposal of oil and gas wastes or oil field fluids.

(D) Prior to backfilling any reserve pit, mud circulation pit, completion/workover pit, or water condensate pit authorized by this paragraph, the person maintaining or using the pit shall, in a permitted manner or in a manner authorized by §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes), dispose of all oil and gas wastes which are in the pit.

§4.115. Schedule B Authorized Pits.

(a) Schedule B authorized pits. A produced water recycling pit is a Schedule B authorized pit.

(b) Financial security requirements.

(1) Pursuant to Natural Resources Code §91.109(a), the operator of a produced water recycling pit shall maintain a performance bond or other form of financial security conditioned that the operator will operate and close the produced water recycling pit in accordance with this subchapter.

(2) For each produced water recycling pit an operator shall file financial security in one of the following forms:

(A) a blanket performance bond; or

(B) a letter of credit or cash deposit in the same amount as required for a blanket performance bond.

(3) An operator required to file financial security under paragraph (1) of this subsection shall file one of the following types and amounts of financial security.

(A) A person operating five or less pits may file a performance bond, letter of credit, or cash deposit in an amount equal to $1.00 per barrel of total pit capacity.

(B) A person operating more than five pits may file a performance bond, letter of credit, or cash deposit in an amount equal to:

(i) the greater of $1.00 per barrel of water for ten percent of an operator's total produced water recycling pit capacity or $1,000,000; or

(ii) $200,000 per pit, capped at $5,000,000.

(4) The operator shall submit required financial security at the time the operator registers the produced water recycling pit.

(5) The operator shall submit bonds and letters of credit on forms prescribed by the Commission.

(c) Non-commercial fluid recycling pits authorized prior to July 1, 2025. Non-commercial fluid recycling pits that were authorized pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to July 1, 2025 are authorized as produced water recycling pits under this section, provided the operator registers the pit and files the required financial assurance by January 1, 2026.

(d) Produced water recycling pit contents. A person shall not deposit or cause to be deposited into a produced water recycling pit any oil field fluids or oil and gas wastes other than those fluids described in §4.110(76) of this title (relating to Definitions) and any fluids authorized by the Director pursuant to §4.112(a)(3) of this title (relating to Authorized Recycling).

(e) General location requirements for produced water recycling pits. No produced water recycling pit shall be located:

(1) on a barrier island or a beach;

(2) within 300 feet of surface water;

(3) within 500 feet of any public water system well or intake;

(4) within 300 feet of any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized;

(5) within a 100-year flood plain; or

(6) within 500 feet of a public area.

(f) General design and construction requirements for produced water recycling pits. All produced water recycling pits shall comply with the following requirements.

(1) The operator shall design and construct a produced water recycling pit to ensure the confinement of fluids to prevent releases.

(2) A produced water recycling pit shall be large enough to ensure adequate storage capacity of the volume of material to be managed and to maintain two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(3) A produced water recycling pit shall be designed and constructed to prevent non-contact stormwater runoff from entering the pit. A berm, ditch, proper sloping, or other diversion shall surround a produced water recycling pit to prevent run-on of any surface waters including precipitation.

(4) A produced water recycling pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. The operator shall construct a produced water recycling pit so that the slopes are no steeper than three horizontal feet to one vertical foot (3H:1V). The District Director may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the produced water recycling pit in a safe manner to prevent contamination of fresh water and protect public health, public safety, and the environment.

(5) Produced water recycling pits shall be lined.

(A) The liner shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the produced water recycling pit due to pressure gradients (including static head and external hydrogeologic forces), physical contact with material in the pit or other materials to which the liner may be expected to be exposed, climatic conditions, stress of installation, and use.

(B) All of the pit shall be lined, including the dike or berm, and the liner shall be properly anchored or keyed into the native substrate to prevent erosion or washout of the dike, berm, or liner.

(C) A liner may be constructed of either natural or synthetic materials.

(D) A liner constructed of natural materials shall meet the following requirements:

(i) A natural liner shall only be used for a produced water recycling pit with an active life of less than one year.

(ii) A natural liner shall be constructed of a minimum of two feet of compacted fat clay, placed in continuous six-inch lifts compacted to a 95% standard proctor as defined in ASTM D698 and having a hydraulic conductivity of 1.0 x 10 7 cm/sec or less. Where natural liner materials are used, the operator shall perform appropriate testing to ensure compliance with these requirements and shall maintain copies of the test results for the life of the pit.

(iii) A produced water recycling pit with a natural liner shall not be used for waste disposal pursuant to §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes) unless the pit also has a synthetic liner.

(E) A synthetic liner shall meet the following requirements:

(i) A synthetic liner shall be placed upon a firm, unyielding foundation or base capable of providing support to the liner, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear.

(ii) A synthetic liner shall be underlain by a geotextile where needed to reduce localized stress, strain, or protuberances that may otherwise compromise the liner's integrity.

(iii) A synthetic liner shall be made of an impermeable geomembrane capable of resisting pressure gradients above and below the liner to prevent failure of the liner.

(iv) A synthetic liner shall have a breaking strength of 40 pounds per inch using test method ASTM D882.

(v) A synthetic liner shall have a puncture resistance of at least 15 pounds force using test method ASTM D4833.

(vi) The length of synthetic liner seams shall be minimized, and the seams shall be oriented up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams. A synthetic liner shall have a seam strength, if applicable, of at least 15 pounds per inch using test method ASTM D751 or ASTM D6392.

(g) General operating requirements for produced water recycling pits. All produced water recycling pits shall be operated in accordance with the following requirements.

(1) Freeboard of at least two feet plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event shall always be maintained in produced water recycling pits.

(2) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(3) Operators shall establish an inspection program to ensure compliance with the applicable provisions of this section taking into consideration the nature of the pit and frequency of use.

(4) If the operator does not propose to empty the produced water recycling pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system shall be monitored daily to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.

(5) The operator of a produced water recycling pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(6) Free oil shall not be allowed to accumulate on or in a produced water recycling pit.

(h) General closure requirements for produced water recycling pits. All produced water recycling pits shall comply with the following closure requirements.

(1) Prior to closure of the pit, the operator shall dewater the pit.

(2) Prior to closure of the pit, all waste shall be removed from the pit unless the requirements of subsection (j) of this section are met.

(i) Closure requirements for produced water recycling pits if all waste is removed for disposal.

(1) The contents of the pit, including synthetic liners, if applicable, shall be removed for disposal at an authorized or permitted waste facility.

(2) The operator shall verify whether oil and gas waste has migrated beyond the pit floor and sidewalls.

(3) The operator shall collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A fraction of an acre of pit surface area will require a composite sample.

(A) The samples shall be analyzed for the constituents and using the methods identified in the figure in this subsection to determine whether the constituent concentrations exceed the limit in the figure or background concentrations.

(B) If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall:

(i) sample soil in the pit floor locations before or during pit construction;

(ii) collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A fraction of an acre of pit surface area will require a composite sample; and

(iii) analyze the soil samples for the constituents listed in the figure in this subsection.

(C) If the concentration of the constituents exceeds the limits in the figure in this subsection or the concentrations determined from background sampling and analysis, the operator shall notify the District Director within 24 hours of discovery of the constituent exceedance.

(i) The District Director may refer the matter to the Site Remediation Unit in Austin.

(ii) The operator shall follow instructions provided by the District Director or Site Remediation regarding further investigation, remediation, monitoring, closure, and reporting.

(D) If the concentration of the constituents does not exceed the limits in the figure in this subsection or background concentrations, the operator shall proceed with closure.

(i) The operator shall backfill the pit with non-waste containing, uncontaminated, earthen material.

(ii) The backfill shall be compacted in a manner that minimizes future consolidation, desiccation, and subsidence.

(iii) The operator shall mound or slope the former pit site to encourage runoff and discourage ponding.

(iv) The operator shall, where necessary to ensure ground stability and prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in undisturbed soil in the vicinity of the pit.

(E) The operator shall notify the District Director a minimum of seven days prior to closure of the produced water recycling pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met.
Figure: 16 TAC §4.115(i)(3)(E)

(j) Closure requirements for produced water recycling pits if waste will be buried in place pursuant to §4.111 of this title.

(1) The operator shall ensure that any oil and gas waste, including synthetic liners, that will be disposed of in the pit as authorized by §4.111 of this title is buried in a manner such that the waste will remain below the natural ground surface and be confined to the original dimensions of the pit.

(2) The operator shall determine the suitability of the waste material or mixture for disposal in the pit.

(A) The operator shall collect one five-point composite waste material or mixture sample for each acre of pit surface area. A fraction of an acre of pit surface area will require a composite sample.

(B) The samples shall be analyzed for the constituents and using the methods identified in the figure in this subsection to determine whether the constituent concentrations are below the limit in the figure or background concentrations.

(C) If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall:

(i) sample soil in the pit floor locations before or during pit construction;

(ii) collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor. A fraction of an acre of pit surface area will require a composite sample; and

(iii) analyze the soil samples for the constituents listed in the figure in this subsection.

(3) Waste material that meets the constituent limits in the figure in subsection (i) of this section or background concentrations may be buried in the pit without additional disposal considerations.

(4) Untreated waste material that does not meet the constituent limits in the figure in subsection (i) of this section may be buried by containment in a pit if:

(A) the pit has a double liner with a leak detection system or has a single liner for which the operator demonstrates the liner is intact and maintains the liner intact;

(B) the waste material is covered with a geonet to support the overburden fill material; and

(C) the pit is backfilled, sufficiently compacted, and contoured to prevent water infiltration into the waste zone.

(5) Treated waste material that meets the constituent limits in the figure in this subsection based on the distance from the bottom of the pit to the shallowest groundwater may be buried in the pit. Liners in the pit may be removed from the pit or disposed of in the pit upon closure.

(6) The operator shall proceed with closure as follows:

(A) The operator shall backfill the pit with non-waste containing, uncontaminated, earthen material.

(B) The backfill shall be compacted in a manner that minimizes future consolidation, desiccation, and subsidence.

(C) The operator shall mound or slope the burial pit site to encourage runoff and discourage ponding.

(D) The operator shall, where necessary to ensure ground stability and prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in undisturbed soil in the vicinity of the pit.

(7) The operator shall notify the District Director a minimum of seven days prior to closure of the produced water recycling pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met.

(8) The Commission may require the operator to close a produced water recycling pit in a manner other than the manner described in this section if it determines that oil and gas wastes or oil field fluids are likely to escape from the pit, that oil and gas wastes or oil field fluids may cause or are causing pollution, and/or that the pit is being used in a manner inconsistent with Commission rules.
Figure: 16 TAC §4.115(j)(8)

(k) Groundwater monitoring requirements for Schedule B authorized pits.

(1) For all Schedule B authorized pits, the operator shall evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The operator shall review readily available public information to evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The presence of a water well within a one-mile radius of the pit that produced or produces water from a depth of 100 feet or less indicates groundwater is likely to be present within 100 feet of the ground surface. If the operator cannot determine whether groundwater is likely to be present within 100 feet of the ground surface based on a review of readily available public information, the operator shall obtain location-specific subsurface information to establish the presence or absence of groundwater within 100 feet of the ground surface.

(2) Operators of Schedule B authorized pits located in areas where groundwater is not likely to be present within 100 feet of the ground surface are not required to perform groundwater monitoring.

(3) Operators of Schedule B authorized pits located in areas where groundwater is likely to be present within 100 feet of the ground surface are required to perform groundwater monitoring in accordance with paragraph (4) of this subsection unless:

(A) the pit has a double synthetic liner with an operational leak detection system; or

(B) the pit has a liner and an active life of less than one year.

(4) When groundwater monitoring is required under this subsection, the operator shall install at least three groundwater monitoring wells, at least two of which are installed in a hydrologic downgradient location relative to the pit and at least one of which is installed in an upgradient location relative to the pit.

(5) The following is required for each soil boring or groundwater monitoring well drilled.

(A) The drilling method shall allow for periodic or continuous collection of soil samples for field screening and soil characterization in order to adequately characterize site stratigraphy and groundwater bearing zones.

(B) The groundwater monitoring wells shall be completed by a certified water well driller in accordance with 16 TAC Part 4, Chapter 76 (Water Well Drillers and Water Well Pump Installers).

(C) The groundwater monitoring wells shall be completed to penetrate the shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater zone.

(D) The screened interval of the groundwater monitoring wells shall be designed to intercept at least five feet of groundwater.

(E) The groundwater monitoring well screen shall extend above the static water level.

(F) The sand pack size shall be compatible with the well screen slot size, as well as the local lithology.

(G) The groundwater monitoring well heads shall be protected from damage by vehicles and heavy equipment.

(H) The groundwater monitoring wells shall be maintained in good condition with a lockable watertight expansion cap.

(I) The groundwater monitoring wells shall be able to provide a sample that is representative of the groundwater underlying the site for the duration of pit operations.

(J) The operator shall retain the following information for three years after the monitoring wells are plugged:

(i) a soil boring lithological log for the well, with the soils described using the Unified Soil Classification System (USCS) (equivalent to ASTM D 2487 and ASTM D 2488); the method of drilling; well specifications; slotted screen type and slot size; riser and screen length; bentonite and cement intervals; total depth; and the depth of the first encountered groundwater or saturated soils;

(ii) a well installation diagram, detailing construction specifications for each well;

(iii) a survey elevation for each well head reference point to the top of the casing relative to a real or arbitrary on-site benchmark or relative to mean sea level;

(iv) a table with recorded depth to water, depth to top of casing, and adjusted depth to water data;

(v) an updated Site Plan and a potentiometric surface map showing static water levels, the calculated gradient, and the estimated direction of groundwater flow; and

(vi) the laboratory analytical reports and the corresponding chain of custody from each groundwater sampling event.

(6) The operator shall sample the wells after installation of the wells is complete and shall then sample the wells on a quarterly schedule.

(7) The wells shall be monitored and/or sampled for the following parameters: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(8) If any of the parameters identified in paragraph (7) of this subsection indicate potential pollution:

(A) the operator shall notify the District Director by phone or email within 24 hours of receiving the analytical results; and

(B) the District Director will determine whether additional remediation, monitoring, or other actions are 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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Railroad Commission of Texas
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DIVISION 4. REQUIREMENTS FOR ALL PERMITTED WASTE MANAGEMENT OPERATIONS

16 TAC §§4.120 - 4.132, 4.134, 4.135

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.120. General Requirements for All Permitted Operations.

(a) A waste management activity that is not authorized by this subchapter shall require a permit.

(b) The Commission may issue a permit to manage oil and gas wastes only if the Commission determines that the activity will not result in the endangerment of human health or the environment, the waste of oil, gas, or geothermal resources, or pollution of surface or subsurface water.

(c) This division establishes the permit requirements applicable to all permitted waste management operations. Any person engaged in waste management authorized by permit shall comply with the requirements in this division.

(d) A person applying for or acting under a Commission permit to manage oil and gas waste may be required to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the management facility in accordance with state law, Commission rules, and the permit to operate the facility.

(e) In addition to the requirements in this division, any person engaged in the following waste management operations shall comply with the requirements of the following, as applicable.

(1) Requirements applicable to commercial facilities are found in Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(2) Requirements applicable to permitted pits are found in Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(3) Requirements applicable to landfarming and landtreating are found in Division 7 of this subchapter (relating to Additional Requirements for Landfarming and Landtreating).

(4) Requirements for reclamation operations are found in Division 8 of this subchapter (relating to Additional Requirements for Reclamation Plants).

(5) Miscellaneous permit requirements applicable to emergency permits, minor permits, and all other activities not otherwise authorized or addressed in this subchapter are found in Division 9 of this subchapter (relating to Miscellaneous Permits).

(6) Requirements applicable to oil and gas waste characterization, documentation, manifests, and transportation are found in Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(f) With regard to permits issued pursuant to Divisions 4 through 9 of this subchapter, the Director may impose additional permit conditions necessary to protect human health and the environment, to prevent the waste of oil, gas, or geothermal resources, or to prevent pollution of surface or subsurface water.

§4.121. Permit Term.

(a) Unless otherwise provided, a permit issued pursuant to Divisions 4 through 9 of this subchapter shall be valid for a term of not more than five years.

(b) Any permit issued by the Commission under §3.8 of this title (relating to Water Protection) prior to July 1, 2025 shall remain in effect until it expires on its own terms, is renewed pursuant to the requirements of this subchapter, or is modified, suspended, or terminated by the Commission pursuant to §4.123 of this title (relating to Permit Modification, Suspension, and Termination).

(c) A permit shall remain in effect while a renewal application that was filed in a timely manner is pending review and evaluation by the Commission.

§4.122. Permit Renewals, Transfers, and Amendments.

(a) Compliance with rules in effect at the time of permit renewals, transfers, or amendments. To ensure compliance with the rules in effect at the time of a request to renew, transfer, or amend a permit, the Commission may review and revise permit conditions when it receives the request. When transitioning permits that were issued under §3.8 of this title (relating to Water Protection) prior to July 1, 2025 into permits that are issued under this subchapter, the Commission:

(1) will not require the operator to relocate existing permitted waste management units to conform to new siting requirements;

(2) will not require the operator to retrofit existing waste management units to conform to new standards if those waste management units are constructed and operating in compliance with their current permits;

(3) may require the operator to add to or improve the groundwater water monitoring systems at existing facilities; and

(4) may require the operator to combine all waste management units at a facility under one permit.

(b) Permit renewal. Permits issued pursuant to this subchapter may be renewed in accordance with the following requirements.

(1) The permittee shall file an application for a renewal permit at least 60 days before the expiration date specified in the permit. Bundling permit renewals with transfers and/or amendments is encouraged.

(2) For any permit required to file financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements), the permittee shall file an updated closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter (relating to Oil and Gas NORM). The permittee shall conduct a NORM survey before the renewal is approved if a NORM survey has not been conducted within the last five years.

(3) Permit renewal applications are subject to the notice requirements of §4.125 of this title (relating to Notice and Opportunity to Protest).

(4) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the renewal.

(5) The permit shall not be renewed unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(6) Permit renewals will be issued for a maximum of five years from the date of issuance.

(c) Permit transfer. Permits issued pursuant to this subchapter may be transferred in accordance with the following requirements.

(1) A permittee may request to transfer a permit to a new operator by notifying the Director in writing at least 60 days before the transfer takes place. Bundling permit transfers with renewals and/or amendments is encouraged.

(2) For any permit required to file financial security in accordance with §3.78 of this title, the transferee shall file a new closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter. The transferee shall conduct a NORM survey before the transfer is approved if a NORM survey has not been conducted within the last five years. The transferee shall file the required financial security in the approved amount with the Commission before the permit is transferred.

(3) If the proposed transferee operator does not own the surface property, the transferee operator shall provide evidence of the proposed transferee's authority to operate the facility in accordance with §4.126(b) of this title (relating to Location and Real Property Information).

(4) A request to transfer a commercial permit associated with a Form P-4 (Certificate of Compliance and Transportation Authority) shall be submitted on Form P-4. A request to transfer a commercial permit not associated with a Form P-4 shall be submitted in writing to the Director.

(5) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the transfer.

(6) The permit shall not be transferred unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(7) Permit transfers will be issued through the current permitted expiration date and may be issued for a maximum of five years if combined with a permit amendment and/or permit renewal.

(d) Permit amendment. Permits issued pursuant to this subchapter may be amended in accordance with the following requirements.

(1) A permit amendment is required before a permittee may conduct any activities other than those activities specifically authorized by the permit.

(2) The permittee shall file an application for amendment at least 90 days before the proposed new operations are scheduled to commence. Bundling permit amendments with transfers and/or renewals is encouraged. The application shall include the following information as applicable.

(A) For pit permit amendments that change the pit construction, dimensions, or capacity, the permittee shall submit appropriate diagrams, cross-sections, and other supporting information.

(B) For any permit required to file financial security in accordance with §3.78 of this title, if the amendments to the permit would increase the cost of closure, the permittee shall submit an updated closure cost estimate.

(C) Permit amendment applications are subject to the notice requirements of §4.125 of this title (relating to Notice and Opportunity to Protest). However, the Director may reduce or waive notice requirements for amendments that reflect minimal impact to facility operations, waste management volumes, closure cost estimates, or potential for pollution to surface or subsurface waters. The Director shall establish criteria for a determination of minimal impact and the criteria shall be published on the Commission's website and in appropriate guidance documents.

(D) The Director may request any additional information reasonably necessary to prevent pollution.

(3) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the amendment.

(4) The permit amendment shall not be approved unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(5) Permit amendments will be issued through the current permitted expiration date and may be issued for a maximum of five years if combined with a permit transfer and/or permit renewal.

§4.123. Permit Modification, Suspension, and Termination.

(a) A permit issued pursuant to this subchapter, or a permit issued pursuant to §3.8 of this title (relating to Water Protection) before July 1, 2025, may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for hearing.

(b) A finding of any of the following facts shall constitute good cause:

(1) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(2) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(3) continued operation of the facility presents an imminent danger to human health or property;

(4) the permittee has violated the terms and conditions of the permit or Commission rules;

(5) the permittee misrepresented any material fact during the permit issuance process;

(6) a material change of conditions has occurred in the permitted operations;

(7) the information provided in the application has changed materially; or

(8) the permittee failed to give the notice required by the Commission during the permit issuance, amendment, or renewal process.

§4.124. Requirements Applicable to All Permit Applications and Reports.

(a) Unless otherwise specified by rule, a permit application shall be filed with the Technical Permitting Section. The application shall be filed by mail, hand delivery, or by an electronic process approved by the Director. A permit application shall be considered filed with the Commission on the day it is date-stamped by the Commission's office in Austin.

(b) The permit application shall contain information addressing each applicable application requirement and all information necessary to initiate the final review by the Technical Permitting Section, including all information required by this division and the applicable provisions of Divisions 5 through 9 of this subchapter, as described in §4.120 of this title (relating to General Requirements for All Permitted Operations).

(c) When a Commission prescribed application form exists, either in paper or electronic form, an applicant shall apply on the prescribed form according to the form instructions. When a Commission prescribed application form does not exist, the permit application shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(d) The permit application shall contain the following information for the applicant:

(1) the applicant's organization name;

(2) the applicant's organization report (P-5) number;

(3) the applicant's physical address, and mailing address if different;

(4) the name, telephone number, and email address of a contact person for the application, which can be someone within the applicant's organization or an agent;

(5) the identifying name of the proposed facility; and

(6) a general narrative description of the proposed management of oil and gas wastes at the facility.

(e) The technical data in the permit application shall comply with the following requirements.

(1) All geographic coordinates submitted to the Technical Permitting Section shall use the North American Datum (NAD) 83, in decimal degrees to six decimal places of longitude and latitude.

(2) All maps, plans, and diagrams submitted to the Technical Permitting Section shall be drawn to scale and include a scale, north arrow, title block, and legend. Maps shall be of material suitable for a permanent record and shall be on sheets 8-1/2 inches by 11 inches or, alternatively, 8-1/2 inches by 14 inches or 11 inches by 17 inches folded to standard letter size.

(3) All chemical laboratory analyses submitted to the Technical Permitting Section are required to be performed in accordance with the following.

(A) All chemical laboratory analyses shall be conducted using appropriate EPA methods or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory neither owned nor operated by the permittee. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by ASTM and certified by a professional engineer licensed in Texas.

(B) All chemical laboratory analytical results shall include the full laboratory analytical report and the corresponding chain of custody.

(4) All NORM screening surveys submitted to the Technical Permitting Section shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. The manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a facility diagram showing where all readings, including the background, were taken;

(E) the readings (in microroentgens per hour); and

(F) the full name of the person conducting the survey.

(f) The application shall include a stormwater management plan that contains plans and diagrams to segregate, manage, and dispose of all contact stormwater and non-contact stormwater at the facility.

§4.125. Notice and Opportunity to Protest.

(a) Purpose. Applicants are encouraged to engage with their communities early in the waste facility planning process to inform the community of the plan to construct a facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the facility will be located;

(2) the surface owners of tracts adjacent to the tract on which the facility will be located;

(3) the surface owners of tracts located within 500 feet of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the facility is located;

(4) the city clerk or other appropriate city official if any part of the tract on which the facility will be located lies within the municipal boundaries of the city;

(5) the Commission's District Office; and

(6) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail.

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed facility will be located;

(D) the location of the tract on which the proposed facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of fluid or waste to be managed at the facility;

(F) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice;

(G) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(H) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(I) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(J) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director determines that the applicant, after diligent efforts, has been unable to ascertain the name and address of one or more persons required by this section to be notified, then the Director may authorize the applicant to notify such persons by publishing notice of the application in accordance with the procedure and contents required by §4.141 of this title (relating to Additional Notice Requirements for Commercial Facilities). The Director will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required to be notified if the applicant has examined the current county tax rolls and investigated other reliable and readily available sources of information.

(e) Proof of notice.

(1) After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(A) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(B) the registered or certified mail receipts; and

(C) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(2) If the Director authorizes notice by publication in accordance with subsection (d)(4) of this section, the applicant shall provide the following as proof of notice:

(A) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(B) the tear sheets for each published notice.

(f) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date of notice or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is provided or within 30 calendar days of the last date of publication, whichever is later.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

§4.126. Location and Real Property Information.

(a) The permit application shall contain the following information for the facility:

(1) the location of the proposed facility, including the physical address and geographic coordinates of the center of the facility; and

(2) a description of the property on which the facility is located, including:

(A) for each surface owner of the property, the application shall include the name, mailing address, and telephone number of each surface owner, or if any owner is not an individual, the name, mailing address, and telephone number of the contact person for that owner; and

(B) a legal description of the property, including the survey name, abstract number, and size in acres.

(b) A permit application shall include a statement regarding the authority by which the operator has the right to permit and operate the facility. Proper authority may include, but is not limited to:

(1) ownership of the property where the proposed facility is located;

(2) a leasehold interest in the oil and gas estate;

(3) written consent of the surface owner; or

(4) any other authority the Director determines is appropriate.

(c) The application shall include a general location map which shows the facility including the items listed in paragraphs (1)-(7) of this subsection and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet unless the size of a smaller facility is not discernable at that scale. The map shall show the following:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the location of each regulated feature in decimal degrees to six decimal places of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) the distance to the nearest property line or public road;

(5) the tracts of land adjacent to the facility requiring notice as prescribed by the Commission;

(6) the name of the surface owners of such adjacent tracts; and

(7) other information requested by the Director reasonably related to the prevention of pollution.

§4.127. Engineering and Geologic Information.

(a) A permit application shall include descriptions of the following elements and specify the sources of information:

(1) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) the subsurface geology, including an assessment of the presence and characteristics of permeable and impermeable strata;

(3) the subsurface hydrogeology, including the depth to the shallowest groundwater, an assessment of groundwater quality, the direction of groundwater flow, groundwater use in the area, and any major and minor aquifers (as defined by the Texas Water Development Board) in the facility area; and

(4) any engineering, geological, or other information which the Director deems necessary to show that issuance of the permit will not result in the endangerment of human health and the environment, the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) If information is not available to address subsection (a) of this section, a site investigation including soil boring, sampling, and analysis is required.

(c) If otherwise required under Texas Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a professional engineer or geoscientist licensed in Texas shall conduct the geologic and hydrologic evaluations required under this section and shall affix the appropriate seal on the resulting reports of such evaluations.

§4.128. Design and Construction.

(a) Application. The following information shall be submitted with each permit application:

(1) a facility diagram clearly showing the items listed in subparagraphs (A)-(G) of this paragraph and any other pertinent information regarding the facility and associated activities. Diagrams shall be on a scale that shows the entire facility and activities within the Commission's jurisdiction on a single page. The diagram shall show the following:

(A) a clear outline of the proposed facility, areas where oil and gas waste will be managed, and property boundaries;

(B) all wells, pits, areas where oil and gas waste will be managed, and any other activity under the jurisdiction of the Commission that may occur at the proposed facility;

(C) the location of all tanks and equipment;

(D) all berms, dikes, or secondary containment;

(E) all fences, roads, and paved areas;

(F) the shortest distance between the facility and waste management unit boundary to the nearest property line or public road; and

(G) the location of any pipelines within the facility boundaries;

(2) a description of the type and thickness of liners (e.g., fiberglass, steel, concrete), if any, for all tanks, silos, pits, and storage areas or cells;

(3) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(4) a map view and two perpendicular cross-sectional views of pits and/or storage areas or cells to be constructed, showing the bottom, sides, and dikes and the dimensions of each; and

(5) a plan to control and manage all stormwater runoff and to retain wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect stormwater during a 25-year, 24-hour rainfall event, and all calculations made to determine the required capacity and design.

(b) Design and construction requirements. All permittees shall comply with the following requirements.

(1) The permittee shall post signs at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least six inches in height.

(2) Dikes or containment structures shall be constructed around all areas managing oil and gas wastes. All earthen dikes surrounding pits and constructed as perimeter berms shall be compacted

or constructed of material that meets 95% Standard Proctor (ASTM D698) or 90-92% Modified Proctor (ASTM D1557) density and meets a permeability of 1 x 10-7 cm/sec or less when compacted. During construction, successive lifts shall not exceed nine inches in thickness, and the surface between lifts shall be scarified to achieve a good seal. These structures shall be used to divert non-contact stormwater around the waste management unit and contain and isolate contact stormwater within the bermed area.

(3) Secondary containment shall be provided for all above-ground storage tanks. Secondary containment for a minimum of 120% total storage capacity is recommended. Secondary containment that will contain the largest tank's maximum capacity plus two feet of freeboard and capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event is acceptable.

(4) Contact stormwater shall be collected within 24 hours of accessibility and disposed of in an authorized manner.

(5) The facility shall maintain security to prevent unauthorized access. Access shall be secured by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended to prevent vehicle or livestock access. Fencing shall be required unless terrain or vegetation prevents vehicle or livestock access except through entrances with lockable gates.

(6) All liner systems shall be installed and maintained in a manner that will prevent pollution and/or the escape of the contents of the pit.

§4.129. Operation.

(a) Application. All permit applications shall include the following operating information:

(1) a description of the sources and types of wastes to be received;

(2) a description of plans for waste sampling and analysis;

(3) a description of all waste management operations including receipt, handling, storage, treatment, recycling, reclamation, and disposal, and the location of each operation;

(4) a description of how wastes will be transferred between waste management units within the facility;

(5) a description of any operational limitations, including the maximum amount of oil field fluids or oil and gas wastes that will be stored in any area at one time less the volume required to maintain the required two feet of freeboard and the volume of precipitation from a 25-year, 24-hour rainfall event;

(6) a description of plans to prevent, report, and control unauthorized access;

(7) a list of all chemicals to be used and their associated safety data sheets;

(8) plans for routine inspections, maintenance, and monitoring;

(9) a description of plans to prevent, report, and control spills and leaks;

(10) plans for controlling contact and non-contact stormwater runoff;

(11) plans for managing incoming wastes during wet weather;

(12) a description of plans for recordkeeping, including records of waste receipts and dispositions; and

(13) safety data sheets for any chemical or component proposed to be used in the treatment of waste at the facility.

(b) Operating requirements. Each facility shall be operated in accordance with the following requirements.

(1) The permittee shall only accept waste it is permitted to receive. The permittee shall only accept waste transported and delivered by a Commission-permitted waste hauler permitted pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(2) No waste, treated or untreated, shall be placed directly on the ground.

(3) All storage tanks, equipment, and on-site containment shall be maintained in a leak-free condition. If inspection of a tank, on-site containment, or storage vessel reveals deterioration or leaks, the tank, on-site containment, or storage vessels shall be repaired or replaced before resuming use.

(4) Any spill of waste, chemical, or any other material shall be collected and containerized within 24 hours and processed through the treatment system or disposed of in an authorized manner.

(5) Any chemical used in the treatment process shall be stored in vessels designed for the safe storage of the chemical and these vessels shall be maintained in a leak-free condition.

(6) Any soil additives, stabilizers, bio-accelerators, or treatment chemicals shall be approved by the Director prior to use at the facility. Use of the chemical or component is contingent upon Director approval. All chemicals and components shall be stored according to the manufacturer's specifications.

§4.130. Reporting.

(a) The permittee shall maintain for a period of at least three years records of each Waste Profile Form and Waste Manifest described in §4.190 and §4.191 of this title (relating to Oil and Gas Waste Characterization and Documentation, and Oil and Gas Waste Manifests, respectively) that the permittee generated or received.

(b) The permittee shall make all records required by this section available for review and/or copying upon request.

(c) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted on a form prescribed by the Commission. If a Commission prescribed report form does not exist, the report shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this report, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(d) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted in accordance with the following requirements.

(1) Reports shall be filed with the Commission electronically in a digital format acceptable to the Commission no later than one year after the date the Commission has the technological capability to receive the electronic filing.

(2) If a permit requires quarterly reports, the quarterly reporting periods shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year.

(3) If a permit requires quarterly, semi-annual, or annual reports, reports shall be made on a Commission-designated form or

electronic filing system and submitted to the Technical Permitting Section and the Commission District Office no later than the 30th day of the month following each reporting period.

(4) If a permit requires monthly reports, the report shall be made on a Commission-designated form or electronic filing system and submitted to Technical Permitting Section and the District Office no later than the 15th day of the month following each reporting period.

§4.131. Monitoring.

(a) Application. The following information shall be submitted with each permit application:

(1) a plan and schedule for conducting periodic inspections, including plans to inspect pits, equipment, processing, and storage areas; and

(2) a potentiometric contour map showing static water levels and the estimated direction of groundwater flow and the calculated gradient.

(b) Groundwater monitoring requirements.

(1) If shallow groundwater is present within 100 feet below ground surface, groundwater monitoring wells may be required for some facilities, including but not limited to: brine pits, disposal pits, reclamation plants, commercial waste separation facilities, commercial recycling facilities, and commercial landfarming or landtreating facilities. Factors that the Commission will consider in assessing whether groundwater monitoring is required include:

(A) the volume and characteristics of the oil and gas waste to be managed at the facility;

(B) depth to and quality of groundwater within 100 feet below ground surface; and

(C) presence or absence of natural clay layers in subsurface soils.

(2) If the Director requires the operator to install groundwater monitoring wells, the operator shall comply with the following.

(A) The operator shall submit a plan for the installation, sampling, and analysis of monitoring wells at the facility. The plan shall include information on the monitor well drilling method. A mud rotary drilling method shall not be used unless the depth to water has been established.

(B) The monitor wells shall be able to provide representative samples of groundwater underlying the site for the duration of facility operations. If a monitor well is not capable of providing a representative sample, the operator shall notify the Technical Permitting Section.

(C) If groundwater is not observed during drilling of the monitor wells, the soil boring shall be advanced to 100 feet. Borings shall be left open for a minimum of 24 hours to determine if groundwater is present.

(D) If shallow groundwater is present within 100 feet below ground surface at the site, a minimum of three groundwater monitoring wells shall be installed. Wells shall be spaced around the facility or pit, close to the facility operational area, with at least two wells on the estimated down-gradient side of the operational area. Additional wells may be required for larger facilities.

(E) The monitor wells shall be completed by a certified water well driller in accordance with 16 Texas Administrative Code, Part 4, Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

(F) The monitor wells shall be completed to penetrate the shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater zone.

(G) The screened interval of the groundwater monitoring wells shall be designed to intercept at least five feet of groundwater.

(H) The groundwater monitoring well screen shall extend above the static water level.

(I) The sand pack size shall be compatible with the well screen slot size, as well as the local lithology.

(J) The groundwater monitoring well heads shall be protected from damage by vehicles and heavy equipment.

(K) The groundwater monitoring wells shall be maintained in good condition with a lockable watertight expansion cap.

(L) After installation of the wells is complete, the applicant shall submit the following information:

(i) a soil boring lithologic log for each well, with the soils described using the Unified Soil Classification System (equivalent to ASTM D 2487 and 2488). The log shall also include the method of drilling, well specifications, slot size, riser and screen length, bentonite and cement intervals, total depth, and the top of the first encountered water or saturated soils; and

(ii) a survey elevation for each well head reference point (top of casing) relative to a real or arbitrary on-site benchmark and relative to mean sea level.

(3) The applicant shall submit any other information necessary to address each of the operating requirements detailed in paragraph (4) of this subsection.

(4) If the Director requires the permittee to install groundwater monitoring wells, the permittee shall comply with the following requirements.

(A) The facility shall not manage oil and gas wastes at the facility until the groundwater monitoring wells are installed, the permittee submits the initial sample results to Technical Permitting Section, and Technical Permitting Section informs the permittee, in writing, that it may commence active operations.

(B) The permittee shall sample the wells after installation of the wells is complete and shall thereafter sample the wells in accordance with the schedule approved by the Technical Permitting Section, or as otherwise required by the Director.

(C) The following measurements and analyses shall be reported to Technical Permitting Section after any sampling event no later than 15 days after the permittee receives the laboratory analysis results: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(D) If any of the parameters identified in subparagraph (C) of this paragraph indicate pollution, or the potential failure of the liner system, the Commission may require additional monitoring events and/or may require analysis of additional parameters.

§4.132. Closure.

(a) Application. A permit application shall include a detailed plan for closure when operations at the facility or pit terminate. The closure plan shall include a general plan to:

(1) remove all wastes;

(2) demolish and/or remove any liners;

(3) remove dikes;

(4) backfill any excavations and contour and reseed disturbed areas;

(5) sample and analyze soil and, if applicable, groundwater throughout the facility;

(6) if applicable, plug groundwater monitoring wells; and

(7) have financial security released once post closure activities are completed and approved by the Technical Permitting Section.

(b) Closure requirements. The permittee shall close the facility or pit in accordance with the following requirements.

(1) The permittee shall notify the Technical Permitting Section and the District Office in writing at least 45 days prior to commencement of any closure operations.

(2) The permittee shall submit a detailed closure plan to the Technical Permitting Section at least 30 days prior to commencement of any closure activity. The Technical Permitting Section must approve the detailed closure plan before the permittee may initiate closure operations. The permittee shall comply with the closure plan approved by the Technical Permitting Section. The closure plan shall include the following information:

(A) the processing and removal of all wastes, chemicals, and waste-related materials from the facility for authorized reuse or disposal in an authorized manner;

(B) the removal and salvage of all equipment, if possible, or disposal of all equipment in an authorized manner;

(C) unless otherwise authorized, the cleaning and demolishment of all equipment and storage areas, including concrete pads, at the facility; and the disposal in an authorized manner of all rubble, wash-water, and rinsate;

(D) the excavation, removal, and disposal of all contaminated soils from beneath the liners and concrete pads;

(E) a soil sampling plan; and

(F) if required by the Director, a post-closure monitoring plan.

(3) Once the permittee has removed all waste, equipment, concrete pads, contaminated soil, and any other material in accordance with the closure plan, the permittee shall conduct soil sampling in accordance with the approved soil sampling plan. Soil samples shall be analyzed for the parameters in the permit and/or soil sampling plan and submitted to the Technical Permitting Section no later than 30 days after the permittee receives the laboratory results. The Technical Permitting Section may require the permittee to conduct additional closure operations if the soil sample results exceed the authorized limits and/or the Technical Permitting Section determines that additional remediation is required to prevent pollution caused or contributed to by operations at the facility.

(4) The permittee shall grade the pits, on site storage tanks, on site storage areas, and any other facility location to prevent rainfall from collecting at these locations.

(5) If the Director required a post-closure plan, the permittee shall conduct post-closure monitoring in accordance with the post-closure monitoring plan approved by Technical Permitting Section.

§4.134. Application Review and Administrative Decision.

The Technical Permitting Section reviews applications submitted under this subchapter in accordance with §1.201 of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively).

§4.135. Hearings.

(a) The applicant may request a hearing upon receipt of notice that:

(1) the application has been denied by the Director;

(2) the Director has determined the application to be administratively complete but a timely protest to the application has been received; or

(3) the Director has determined that additional permit conditions are required to prevent pollution and the applicant disagrees with the Director's determination.

(b) A request for hearing shall be made to the Technical Permitting Section within 30 days of the date of the notice of administrative denial or notice of a timely protest. If the Director receives a request for a hearing, the Director shall refer the matter to the Hearings Division for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

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 August 16, 2024.

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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 5. ADDITIONAL REQUIREMENTS FOR COMMERCIAL FACILITIES

16 TAC §§4.140 - 4.143

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.140. Additional Requirements for Commercial Facilities.

(a) In addition to the requirements of this division, all applicants for commercial facilities and permittees of commercial facility permits shall comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and any other sections of this subchapter applicable to the applicant's or permittee's management of oil and gas wastes.

(b) A facility authorized or permitted as a non-commercial facility prior to July 1, 2025 but that meets the definition of a commercial facility in §4.110 of this title (relating to Definitions) as of July 1, 2025 shall comply with the requirements of this division or request an exception on or before July 1, 2026.

(c) A facility that meets the definition of a commercial facility in §4.110 of this title is considered a commercial facility under §3.78 of this title (relating to Fees and Financial Security Requirements), and therefore, an applicant for a commercial facility permit shall submit the financial security required by Texas Natural Resources Code §91.109 and §3.78 of this title for each permit renewal, amendment, and/or transfer.

(d) A commercial facility shall not manage oil and gas waste or otherwise begin active operation until the required financial security is approved and accepted by the Commission.

(e) Pursuant to §3.78 of this title, the amount of the financial security shall be the maximum dollar amount necessary to close the facility.

(f) The full financial security shall be maintained:

(1) until all post-closure activities are completed and approved by the Technical Permitting Section; and

(2) while the facility has been referred to and remedial actions are being overseen by the Site Remediation Unit in the Oil and Gas Division.

(g) To determine the maximum dollar amount necessary to close the facility, a professional engineer licensed in Texas shall prepare or supervise the preparation of a closure-cost estimate (CCE).

(1) In addition to the assumptions and calculations specified in §3.78 of this title, the professional engineer shall make the following assumptions when determining the dollar amount necessary to close the facility.

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, including the sampling and analysis of soils to confirm compliance.

(C) None of the operator's other equipment or facilities (e.g., disposal wells, pits, trucks, bulldozers, and employees) are available at the time of closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste. Disposal pits are fully constructed.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not include a salvage or no cost value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and former pits.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed of. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. Solids held within permitted containments shall be reported in cubic yards. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the facility;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon all monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of well maintenance and monitoring. The length of monitoring shall be determined by the Director.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to Technical Permitting Section in Austin for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a facility diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which is described with specificity as to location, type and amount consistent with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on the form provided by the Commission. Once the Commission approves the closure cost and closure plan, the operator will

be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third-party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the depth of the excavation is limited to what can be graded to prevent stormwater from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(h) A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.132 of this title (relating to Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all pits, treatment equipment, and associated piping and other storage or waste processing equipment;

(3) remove dikes and equipment;

(4) contour and reseed disturbed areas;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.141. Additional Notice Requirements for Commercial Facilities.

(a) In addition to the notice requirements detailed in §4.125 of this title (relating to Notice and Opportunity to Protest), an applicant for a commercial facility permit shall also provide notice by publication.

(b) The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) but before the final review is completed.

(c) The published notice shall:

(1) be entitled "Notice of Application for Commercial Oil and Gas Waste Facility" if the proposed facility is a commercial facility;

(2) provide the date the applicant filed the application with the Commission;

(3) identify the name of the applicant;

(4) provide the location of the tract on which the proposed facility will be located including the legal description of the property, latitude/longitude coordinates of the proposed facility, county, name of the original survey and abstract number, and location and distance in relation to the nearest municipality or community;

(5) identify the owner or owners of the property on which the proposed facility will be located;

(6) identify the type of fluid or solid waste to be managed at the facility;

(7) identify the proposed disposal, treatment, or storage method;

(8) state that affected persons may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication;

(9) include the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(10) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(d) The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(1) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(2) the tear sheets for each published notice.

§4.142. Operating Requirements Applicable to Commercial Facilities.

(a) An application for commercial facility shall include a detailed waste acceptance plan to ensure that the waste received at the facility has been fully and correctly documented by the generator and carrier, and characterized by the generator, including supporting laboratory analysis if necessary, and to ensure that prohibited oil field fluids, prohibited oil and gas wastes, and/or non-jurisdictional wastes are not received at the facility.

(b) The operator shall develop and maintain a site-specific spill control plan that details the processes in place to control and contain oil and gas waste in the event of a spill or release. The spill control plan shall be maintained on-site and made available to the Commission upon request.

(c) The operator shall develop and maintain a stormwater management plan to prevent stormwater from running onto the facility, the unauthorized discharge of stormwater, or deleterious impacts of stormwater from the facility to adjoining properties. The stormwater management plan shall be maintained on-site and made available to the Commission upon request.

§4.143. Design and Construction Requirements for Commercial Facilities.

Prior to commencement of operations at a commercial facility, the permittee shall provide the Director with drawings documenting the as-built condition of the facility, including all equipment and waste management units.

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

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DIVISION 6. ADDITIONAL REQUIREMENTS FOR PERMITTED PITS

16 TAC §§4.150 - 4.154

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.150. Additional Requirements Applicable to Permitted Pits.

(a) In addition to the requirements of this division, all permitted pits are required to comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations). Commercial pits are also required to comply with Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(b) If at any time a pit no longer meets the requirements for authorized pits under §4.113 of this title (relating to Authorized Pits), the operator of the pit shall apply for a pit permit pursuant to the requirements of this division.

(c) No person may use a pit without the express permission of the permittee. A person who uses a pit without the express permission of the permittee may be subject to legal enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements.)

(d) Any person using or maintaining a pit without the required permit shall be immediately required to cease usage and close the pit in accordance with §4.154 of this title (relating to Closure of Permitted Pits). Any person using or maintaining a pit without the required permit may be subject to enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title.

(e) Permitted pits are subject to containment requirements to prevent pollution of surface or subsurface water and will be included as permit conditions at the sole discretion of the Commission.

(f) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit permitted by this subchapter, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours.

(g) Unless the Director approves a written request for an exception, no pit shall be located:

(1) on a barrier island or a beach;

(2) within 300 feet of surface water, including wetlands;

(3) within 500 feet of any public water system well or intake;

(4) within 300 feet of any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized; or

(5) within a 100-year flood plain.

(h) A minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the outer edge or toe of the pit walls or berms.

§4.151. Design and Construction of Permitted Pits.

(a) Application.

(1) Unless otherwise provided by permit, all permitted pits shall comply with the general construction requirements applicable to authorized pits in Division 3 of this subchapter (relating to Operations Authorized by Rule).

(2) In addition to the information required by §4.128 of this title (relating to Design and Construction), the facility diagram submitted with the application shall include the following information:

(A) the maximum length, width, and depth of the pit in feet;

(B) the maximum depth of the pit below grade in feet;

(C) the maximum and minimum height of walls or dikes above grade in feet;

(D) the dimensions of the dikes including the width at the base, height, and slope;

(E) the maximum volume of the pit in barrels and cubic yards;

(F) the maximum volume of the pit minus the volume to maintain the required freeboard in barrels and cubic yards;

(G) the volume of the pit below natural grade in barrels and cubic yards;

(H) information on the pit liner type and thickness, installation methods, and manufacturer's specification sheets;

(I) a plan view drawing of each pit, including all dimensions, and any trenches or structures used to separate and convey contact and non-contact stormwater;

(J) two perpendicular, sectional views of each pit showing the bottom, sides, dikes, and natural grade, including all dimensions; and

(K) the surface area and action leakage rate calculation for any pit with a leakage detection system, that is prepared and sealed by a professional engineer licensed in Texas. The action leakage rate calculations shall include:

(i) all assumptions and dimensions used;

(ii) the size of the pump and pipes that will be used in the leakage detection system; and

(iii) calculations demonstrating that the system is designed to sufficiently withdraw and manage the expected leakage rate.

(3) The permittee shall provide any other information necessary to address the operating requirements detailed in subsection (b) of this section.

(b) Operating requirements.

(1) Signage. The permittee shall post a sign at each permitted pit. The sign shall show the permit number in letters and numerals at least three inches in height.

(2) Freeboard. Unless otherwise required by permit or rule, the permittee shall maintain all pits such that each pit maintains a freeboard of at least two feet plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(3) Liners.

(A) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(B) Unless the permit specifically provides otherwise, the liner for any permitted pit required to be lined shall comply with the general requirements for lining in Division 3 of this subchapter (relating to Operations Authorized by Rule), except that the thickness of a high-density polyethylene liner in a permitted pit shall be a minimum of 60 mil and, for any other type of synthetic liner, a minimum of 30 mil.

(C) A brine pit permitted under this subchapter shall be constructed with a primary and secondary liner and a leakage detection system.

(4) Additional requirements as determined by Director. Any pit permits issued pursuant to this subchapter may contain additional requirements concerning design and construction including requirements relating to construction materials, dike or berm design, liner material, liner thickness, procedures for installing liners, overflow warning devices, leak detection devices, monitor wells, and fences that the Director determines are necessary to prevent pollution.

§4.152. Monitoring of Permitted Pits.

(a) A pit permit application shall include a monitoring plan that establishes a procedure for the permittee to routinely monitor the integrity of the liner of a pit. The permittee shall comply with this section by implementing one of the following monitoring methods.

(1) The permittee shall empty the pit and conduct a visual inspection on an annual basis. The permittee shall photograph the interior of the pit and otherwise record each inspection. The permittee shall maintain the photographs and records from each inspection for the life of the pit and supply these records to the Commission upon request.

(2) The permittee shall install a double liner and leak detection system between the primary and secondary liner. The leak detection system shall be monitored on a daily or weekly basis as specified in the permit to determine if the primary liner has failed.

(3) The permittee may implement an alternative monitoring procedure if the permittee demonstrates that the alternative monitoring is at least as protective of surface and subsurface waters as the procedures outlined in paragraphs (1) and (2) of this subsection and if the alternative monitoring procedure is approved by the Director.

(b) The permittee shall monitor all pits for liner failure in accordance with the monitoring plan approved by the Commission pursuant to subsection (a) of this section. The permittee shall consider the following when implementing the monitoring plan.

(1) Failure of the primary liner in a double liner and leak detection system occurs if:

(A) a volume of fluid is withdrawn from the leak detection system that is greater than the calculated action leakage rate, the standard action leakage rate of 1,000 gallons per acre per day (GPAD) for pits that manage fluid waste, or 100 gallons per acre per day (GPAD) for pits that manage solid oil and gas wastes;

(B) any failure in the leak detection and return system or any component of the system occurs; or

(C) any detected damage to or leakage from the secondary liner occurs.

(2) The failure of a liner system may be indicated through results of groundwater monitoring.

(3) If liner failure is discovered at any time, the permittee shall:

(A) notify the Director and the District Director by phone or email within 24 hours of the failure; and

(B) empty the pit as soon as possible, ensuring that all waste stored or contained in the pit is properly managed. Once the pit is emptied, the permittee shall repair the liner and notify the District Director once the repair is complete. The District Director shall inspect the repair before the permittee may place the pit back in active operation.

§4.153. Commercial Disposal Pits.

(a) Siting.

(1) An application for a pit at a commercial disposal facility shall include documentation of a good faith investigation of the 10-year flooding history of the property to determine whether the facility is located in a flood-prone area.

(2) In addition to the requirements of §4.150 of this title (relating to Additional Requirements Applicable to Permitted Pits), a commercial disposal pit shall not be located in:

(A) an area in which the disposal pit is not sufficiently isolated to prevent pollution of surface or subsurface waters;

(B) a prohibited location defined in Division 11 of this subchapter (relating to Requirements for Surface Water Protection); or

(C) any other location where there is an increased risk to surface or subsurface waters.

(3) An application for a commercial disposal pit shall include information to demonstrate that the pit will not be located in an area prohibited under paragraph (2) of this subsection.

(b) Design and construction. An application for a disposal pit permit shall include:

(1) the dimensions of all disposal pits;

(2) the locations and dimensions of all trenches used to separate and convey contact stormwater and non-contact stormwater;

(3) the maximum waste elevations and final cover; and

(4) details of the final cover anchor trench and final cover composition.

(c) Closure. Unless otherwise required by permit or if the Director determines that such post-closure monitoring is necessary to prevent pollution, a post-closure monitoring period of no less than five years is required for any commercial disposal pit and any facility where a commercial disposal pit is located.

§4.154. Closure of Permitted Pits.

In addition to the requirements outlined in §4.132 of this title (relating to Closure), the permittee is required to comply with the following when operations at the pit terminate.

(1) Unless otherwise required by permit, all pits shall be dewatered and emptied within 120 days of cessation of use.

(2) After the soil sampling analysis has been approved by the Director, the pit shall be backfilled and compacted within 120 days.

(3) Once backfilled, the pit shall be reseeded with vegetation natural to the geographic region to prevent erosion after pit closure. Use of treated produced water to establish a natural vegetative cover for the region requires prior approval from the Director pursuant to §4.184 or §4.185 of this title (relating to Permitted Recycling, and Pilot Programs, respectively).

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

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DIVISION 7. ADDITIONAL REQUIREMENTS FOR LANDFARMING AND LANDTREATING

16 TAC §§4.160 - 4.164

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.160. Additional Requirements for Landfarming and Landtreating Permits.

In addition to the requirements of this division, all applications for landfarming and landtreating permits and all permittees conducting landfarming or landtreating shall comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations).

§4.161. Design and Construction Requirements for Landfarming and Landtreating Permits.

(a) Application for landfarming and landtreating permits.

(1) The facility diagram submitted with the permit application shall include:

(A) two perpendicular, sectional views of all landfarming cells to be constructed, showing the bottom, sides, and dikes or berms of the cell with dimensions indicated; and

(B) the locations and dimensions of all areas where landfarming and landtreating will occur, dikes, well locations, fences, and access roads, taking into consideration the following restrictions:

(i) a minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the treatment cells, measured from the toe of the constructed berm to the property boundary; and

(ii) a minimum 300-foot buffer zone shall be maintained between the toe of the constructed berms and any drainage features or surface waters.

(2) The applicant shall submit information to demonstrate that the area has at least 20 inches of tillable soil that is suitable for the application, treatment, and disposal of oil and gas waste.

(3) The applicant shall submit information sufficient for the Director to determine whether the proposed facility will pose a threat of pollution or a threat to public health or safety. The Director will consider the following factors when determining whether the proposed facility presents a threat of pollution or a threat to public health or safety:

(A) the volume and characteristics of the oil and gas waste to be managed at the landfarming facility;

(B) depth to and quality of the shallowest groundwater;

(C) distance to the nearest property line or public road;

(D) proximity to coastal natural resources, sensitive areas as defined by §4.110 of this title (relating to Definitions), water supplies, and/or public, domestic, or irrigation water wells; and

(E) any other factors reasonably necessary to determine whether issuance of the permit will pose a threat of pollution or a threat to public health or safety.

(b) Berm construction. All berms shall be constructed and maintained:

(1) to fully enclose each landfarming cell area;

(2) to a height of at least 36 inches above land surface with a slope no steeper than a one to three (vertical to horizontal) ratio on each side;

(3) so that at least two feet of freeboard plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event is available; and

(4) as otherwise required by the permit.

(c) Reasons for denial. The Director shall deny an application for a landfarming or landtreating permit if the proposed facility location is:

(1) within a 100-year flood plain;

(2) within 300 feet of surface water bodies;

(3) within 300 feet of domestic or irrigation water wells;

(4) within 500 feet of public water system wells or intakes;

(5) on unsuitable soils for depth or treatment of oil and gas waste;

(6) within any other sensitive area as defined by §4.110 of this title; or

(7) non-compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

§4.162. Operating Requirements for Landfarming and Landtreating Permits.

(a) Application. The applicant shall submit the following operating information with each application for landfarming permit:

(1) the estimated chloride concentration of the waste to be accepted at the facility;

(2) the procedure by which waste will be mixed into the soil;

(3) waste to soil application rates;

(4) the frequency of soil tilling;

(5) the maximum depth to which waste will be tilled;

(6) documentation on any soil amendments or microbes to be used;

(7) plans for monitoring and testing the landfarming area, and other appropriate procedures to ensure the treatment of organic constituents and prevention of pollution;

(8) the estimated duration of landfarming activities;

(9) the total cumulative volume of waste, in barrels, to be landfarmed over the active life of the operation or active cells; and

(10) the total cumulative height of waste, in inches, to be landfarmed over the active life of the operation or active cells.

(b) Operating requirements. A landfarming or landtreating permittee shall comply with the following requirements.

(1) Prior to waste application, the permittee shall thoroughly disk the entire landfarming or landtreating area and shall otherwise prepare the area by adding fertilizer, lime, and/or other agricultural chemicals, if needed.

(2) A landfarming or landtreating permittee shall comply with the following waste application requirements.

(A) The permittee shall apply the waste to each landfarming cell to prevent the pooling or migration of the waste outside of the approved landfarming cell and to prevent the waste from entering any watercourses or drainageways, including any drainage ditch, dry creek, flowing creek, river, or any other surface water.

(B) The total cumulative volume of waste applied to any landfarming cell over its lifetime shall not exceed the permitted volume.

(C) The permittee shall maintain freeboard of at least two feet plus capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(D) The permittee shall ensure that the waste is uniformly dispersed across the landfarming or landtreating area and the waste is fully and evenly incorporated into the top six inches of soil. The waste shall be mixed with the soil within 24 hours of waste application. Any active cell shall be disked once a month thereafter until the cell is closed in accordance with the permit.

(E) The permittee is prohibited from applying waste to the cells during periods of rainfall.

(3) Any standing or pooled rainwater or other liquid in a landfarming cell or within the perimeter berm shall be removed within 72 hours and disposed of in an authorized manner. Contact stormwater may be disked into a landfarming cell with prior written approval from the Director.

(4) Land application of contact stormwater outside of a permitted landfarming cell is prohibited.

(5) Any spills of waste or any other materials shall be promptly containerized and disposed of in an authorized manner.

(6) Vehicle access into each cell shall be at a location where the stormwater surface flow cannot enter the treatment cells.

§4.163. Monitoring.

(a) The operator shall monitor three soil zones in each landfarming cell at the following frequency:

(1) the surface treatment zone from the ground surface to a depth of 12 inches below land surface shall be sampled and analyzed quarterly;

(2) the waste treatment zone from 12 to 24 inches below land surface shall be sampled and analyzed quarterly; and

(3) the compliance monitoring zone from 24 to 36 inches below land surface shall be sampled and analyzed annually.

(b) The operator shall collect samples from each active cell as follows:

(1) The District Office shall be notified by phone or email at least 48 hours prior to any sampling event.

(2) Each active cell shall be divided into four-acre plots or other plot size as defined in the permit.

(3) The applicant shall take at least one composite sample for each treatment zone in each plot by subdividing each plot into four equal-sized quadrants.

(A) One composite sample of the surface treatment zone in each plot shall be made from four individual grab samples collected from the surface treatment zone of each quadrant.

(B) One composite sample of the waste treatment zone in each plot shall be made from four individual grab samples collected from the waste treatment zone of each quadrant. (C) One composite sample of the compliance monitoring zone in each plot shall be made from four individual grab samples collected from the compliance monitoring zone of each quadrant.

(c) The operator shall analyze samples from each active cell according to the analysis requirements specified in the permit.

(d) If any composite sample exceeds any limitations specified by the permit or in the figure in this subsection, the operator shall remediate the parcel where the sample was collected as follows.

(1) The plot shall be tilled.

(2) The operator shall collect a composite sample from the four quadrants of the plot and re-analyze the sample for the parameter for which the limitations were exceeded.

(3) The operator shall re-till and resample the plot no less than once per month until the sample analyses indicate that the parameter limitations are not exceeded.

(4) If the parcel exceeds the limitation after six months of sampling, that plot is not authorized to accept additional waste until a sample analysis does not exceed the particular limitation.
Figure: 16 TAC §4.163(d)(4)

(e) Documentation of the sampling and analysis shall be filed with the Technical Permitting Section and the District Office as part of the quarterly report required by the permit. A summary of the soil sampling required by the permit shall include:

(1) a map drawn to scale with coordinates of the sampling locations;

(2) a table indicating the results of the parameters sampled;

(3) the date of sampling;

(4) the approximate depth of the sample below land surface and corresponding zone; and

(5) copies of the laboratory analytical reports and the corresponding chain of custody.

§4.164. Closure.

(a) The permittee shall notify the Technical Permitting Section and the District Office in writing at least 45 days prior to commencing closure of any landfarming cell.

(b) The permittee shall submit a detailed closure plan to the Technical Permitting Section. The Technical Permitting Section must approve the closure plan before the permittee may commence closure of any cell. The composite samples required by §4.163 of this title (relating to Monitoring) shall not exceed the limitations specified by permit before the Technical Permitting Section will approve closure of the cell.

(c) Once the Technical Permitting Section approves closure of a cell, the permittee shall level any berms and grade the area in accordance with the following requirements.

(1) All landfarming cells shall be graded and contoured to prevent rain from collecting or pooling at the former cell locations after closure; and

(2) To the extent practicable, all landfarming cells shall be contoured to original grade and reseeded and/or revegetated with ground cover appropriate for the geographic region.

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 8. ADDITIONAL REQUIREMENTS FOR RECLAMATION PLANTS

16 TAC §§4.170 - 4.173

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.170. Additional Requirements for Reclamation Plants.

(a) Applicability.

(1) This section is applicable to reclamation of tank bottoms and other oil and gas wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §4.110 of this title (relating to Definitions).

(2) Removal of tank bottoms or other oil and gas wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the Technical Permitting Section. For purposes of this division, an "authorized person" is a tank bottoms cleaner or transporter that is under contract for disposition of untreated tank bottoms or other oil and gas wastes to a person who has obtained a permit to operate a reclamation plant.

(3) The removal of tank bottoms or other oil and gas wastes from any facility for which monthly reports are not filed with the Commission shall be authorized in writing by an Oil Movement Letter issued by the Director or District Director prior to such removal. A written request for such authorization shall be sent to the District Director, and shall detail the location, description, estimated volume, and specific origin of the material to be removed as well as the name of the reclaimer and intended destination of the material. If the authorization is denied, the applicant may request a hearing.

(4) No person shall remove basic sediment from any producing lease tank, pipeline storage tank, or other production facility unless authorized to do so by a waste hauler permit pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(5) Unless expressly authorized by permit, no person shall reclaim basic sediment and waste without a reclamation plant permit.

(6) A reclamation plant is a commercial facility and is subject to Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(7) Reclamation plant permits that were issued pursuant to §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) before July 1, 2025 shall expire five years from July 1, 2025. Permits may be renewed pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments).

(8) This section does not apply where basic sediment is recycled or processed on-site by the operator and returned to a tank or vessel at the same lease or facility.

(9) This section does not apply to the recycling of drilling mud. This section does apply to unrefined hydrocarbons recovered from such mud that are sent to a permitted reclamation plant.

(10) All reclamation plants shall be permitted. Satellite reclamation facilities, including waste storage facilities, are strictly prohibited.

(b) Application.

(1) In addition to the requirements of this division, all applicants for reclamation plant permits and permittees operating reclamation plants shall comply with the following:

(A) Division 4 of this subchapter (relating to Requirements for all Permitted Waste Management Operations);

(B) Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities); and

(C) Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(2) Each application for reclamation plant permit shall include:

(A) a list of the waste types to be received;

(B) a detailed description of the treatment process, equipment, and pits, storage, or on-site containment at the facility;

(C) a description of the reclamation process rates and on-site storage capacity of waste and reclaimed material; and

(D) the spill control plan for the facility.

(3) Applicants for a reclamation plant permit shall file the application on the Commission-prescribed form or electronic system.

§4.171. Standard Permit Provisions.

(a) Reclamation plant permits shall be issued for a term of not more than five years.

(b) Reclamation plant permits may be renewed, transferred, or amended pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments). Reclamation plant permits are subject to the financial security requirements in §4.140 of this title (relating to Additional Requirements for Commercial Facilities) and may be subject to fees in accordance with §4.106 of this title (relating to Fees).

(c) If the waste hauler transporting tank bottoms or other oil and gas wastes to the reclamation plant does not comply with Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation), the reclamation plant permittee shall not accept the tank bottoms or other oil and gas wastes and shall report the violation to the District Office no later than 24 hours after the violation occurs.

(d) The receipt of any tank bottoms or other oil and gas wastes from outside the state of Texas shall be submitted on monthly reports to the Commission.

(e) The receipt of any waste materials other than tank bottoms or other oil and gas wastes shall be authorized in writing by the Commission prior to receipt. The Commission may require the reclamation plant operator to submit an analysis of the waste materials prior to a determination of whether to authorize receipt. If the request for authorization is denied, the applicant may request a hearing.

(f) All wastes generated by reclaiming operations shall be disposed of in accordance with this subchapter, §3.9 of this title (relating to Disposal Wells), or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(g) All reclamation facilities shall have in-person 24-hour security monitoring.

(h) Reclamation plant permits shall include enforceable limits on the processing capacity of treatment equipment and the storage volumes of waste and reclaimed oil.

§4.172. Minimum Permit Provisions for Operations.

(a) The following provisions apply to any removal of tank bottoms or other oil and gas wastes from any oil producing lease tank, pipeline storage tank, or other production facility.

(1) Tank bottoms and other oil and gas wastes shall be reclaimed using the methods authorized in the permit.

(2) An authorized representative of the operator of a reclamation plant shall execute a manifest in accordance with §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle) upon each removal of tank bottoms or other oil and gas wastes from any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the information required pursuant to §3.85 of this title, the operator of the reclamation plant or other authorized person shall also include on the manifest:

(A) the Commission identification number of the lease or facility from which the material is removed; and

(B) the gross and net volume of the material as determined by the required shakeout test.

(3) The operator of the reclamation plant or other authorized person shall complete the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed and shall retain a copy for three years.

(4) The operator of the reclamation plant or other authorized person shall keep a copy of the manifest in the vehicle transporting the material.

(b) The operator of a reclamation plant or other authorized person shall conduct a shakeout test on all tank bottoms or other oil and gas wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility to determine the crude oil and/or lease hydrocarbon condensate content. The shakeout test shall be conducted in accordance with the most current API or ASTM method.

(c) Pursuant to §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation), waste characterization and profiling shall be performed before the waste is accepted at the reclamation plant.

§4.173. Minimum Permit Provisions for Reporting.

(a) An operator of a reclamation plant shall file a monthly report documenting the volumetric throughput of waste and reclaimed hydrocarbons.

(b) The Commission may establish a form or electronic system for filing monthly reports for reclamation plants.

(c) For wastes taken to a reclamation plant the following provisions shall apply.

(1) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.

(2) For other oil and gas wastes, the net crude oil content or lease condensate of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.

(d) The net crude oil content or lease condensate of any tank bottoms or other oil and gas wastes removed from an active facility, including a pipeline facility, and disposed of on site or delivered to a site other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with this subchapter and §§3.9 and 3.46 of this title (relating to Disposal Wells; and Fluid Injection into Productive Reservoirs, respectively). Operators may be required to obtain a minor permit for such disposal pursuant to §4.182 of this title (relating to Minor Permits). Prior to approval of the minor permit, the Commission may require an analysis of the disposable material to be performed.

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 9. MISCELLANEOUS PERMITS

16 TAC §§4.180 - 4.182, 4.184, 4.185

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.180. Activities Permitted as Miscellaneous Permits.

This division contains permit requirements for some activities not otherwise addressed in this subchapter. Unless otherwise specified in this division or by the Director, the requirements of Divisions 4 through 8 of this subchapter do not apply to activities permitted under this division.

§4.181. Emergency Permits.

(a) If the District Director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the District Director may issue an emergency permit.

(b) An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the District Office. Notice of the application is not required.

(c) If warranted by the nature of the emergency, the District Director may issue an emergency permit based upon an oral application, or may orally authorize an activity before issuing a written permit authorizing that activity.

(d) An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the District Director at any time for good cause.

§4.182. Minor Permits.

(a) If the District Director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the District Director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water.

(b) An application for a minor permit shall be filed with the Commission in the District Office. Notice of the application shall be given as required by the District Director. The District Director may determine that notice of the application is not required.

(c) A minor permit is valid for 60 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the District Director at any time for good cause.

§4.184. Permitted Recycling.

(a) For non-commercial recycling not otherwise authorized by this subchapter, the Director may authorize such recycling by permit. In determining appropriate permit conditions, the Director shall review the general permit requirements outlined in Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and determine which permit requirements, if any, are necessary to prevent pollution of surface and subsurface water. The Director shall consider the source of the waste, the anticipated constituents of concern, the volume of waste, the location, and the proposed reuse of the treated waste.

(b) Commercial recycling shall be permitted in accordance with Subchapter B of this title (relating to Commercial Recycling).

§4.185. Pilot Programs.

(a) For any recycling activities not otherwise authorized by rule or permit in this subchapter, an operator may propose a pilot program.

(b) A pilot program is a program implemented to assess:

(1) whether the recycled product can be reused in certain activities that are safe and protective of human health and the environment;

(2) the efficiency and effectiveness of the recycling project; or

(3) the appropriate regulatory requirements of a permitted recycling program.

(c) If the Director finds that the proposed pilot program does not present a threat of pollution and encourages recycling of oil and gas wastes, the Commission may authorize a pilot program. The duration of the pilot program shall be sufficient to evaluate the pilot program objectives, which may include sufficient time to take an appropriate non-food based crop from seed through one complete growing cycle.

(1) If the Commission determines that the proposed pilot program prevents pollution and promotes the beneficial reuse of oil and gas waste, the Commission may authorize the recycling by permit pursuant to §4.184 of this title (relating to Permitted Recycling).

(2) If the Commission determines that more time is needed to fulfill the objectives of the pilot program, the Commission may extend the pilot program in increments of no more than one year.

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DIVISION 10. REQUIREMENTS FOR OIL AND GAS WASTE TRANSPORTATION

16 TAC §§4.190 - 4.195

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.190. Oil and Gas Waste Characterization and Documentation.

(a) The generator of oil and gas waste is responsible for characterizing and documenting the waste prior to transportation.

(b) A generator of any waste subject to Commission jurisdiction shall document the waste characterization by completing and retaining a Waste Profile Form that documents the characteristics of each waste stream generated.

(1) A Waste Profile Form shall be made available by the Commission or an operator may use its own form that includes at least the following information for each oil and gas waste stream:

(A) the generator name and P-5 operator number, including the contact information of the person preparing the waste profile;

(B) a generator-assigned identifier (name and/or number) specific to the generated waste;

(C) a description of the waste, including physical and chemical characteristics and constituents;

(D) the estimated quantity of the waste;

(E) the basis for the characterization, which shall be made in accordance with §4.102(a) of this title (relating to Responsibility for Oil and Gas Wastes); and

(F) other information pertinent to characterization.

(2) A generator may establish standard waste profiles for common types of oil and gas waste that are often found at oil and gas sites, such as spent water-based drilling mud, oil-based cuttings, oil-contaminated soil, domestic septage, and rubbish.

(3) A generator of waste that chooses to dispose of or recycle such waste shall provide the Waste Profile Form to the waste hauler and receiver.

(4) The receiver of the oil and gas waste shall include the waste profile information in the periodic reporting requirements as described in the facility permit conditions.

§4.191. Oil and Gas Waste Manifests.

(a) Oil and gas waste that is transported by vehicle from the lease, unit, or other oil or gas property or facility where it is generated to an off-lease facility that manages oil and gas waste shall:

(1) be accompanied by a paper manifest that meets the requirements of this section; or

(2) be documented and tracked by an electronic manifest system that meets the requirements of this section and is accessible to the Commission and all parties involved in the management of the waste.

(b) The Commission shall establish a standard oil and gas waste manifest that may be used in Texas, or operators may use their own forms provided they include at least the following information:

(1) identity of the waste generator, including operator name, Commission-issued operator number, and detailed contact information;

(2) identity of the property or facility where the oil and gas waste was generated, using Commission-issued identifiers including:

(A) operator name and Commission-assigned operator number of the generator;

(B) lease name and Commission-assigned lease number;

(C) facility name and Commission-assigned number, or the latitude and longitude of the waste origin if a Commission-assigned identifier is not available; and

(D) county name;

(3) the corresponding waste profile identifier prepared by the generator as required in §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation);

(4) identity of the facility to which the oil and gas waste is delivered including the identifier issued by the appropriate regulatory agency and detailed contact information for the facility;

(5) transporter name and waste hauler permit number with driver signature;

(6) type and volume of oil and gas waste transported;

(7) date of shipment;

(8) name and signature of generator; and

(9) date of acceptance with waste receiver signature.

(c) The generator of the oil and gas waste, the waste hauler, and the receiver shall keep for a period of three years from the date of shipment copies or electronic records of all manifests.

(d) Oil and gas waste that is moved by pipeline is not required to be accompanied by a manifest but an operator of an oil and gas waste pipeline system is required to:

(1) meter the fluid flow for mass balance into and out of the system;

(2) maintain the metering records for three years; and

(3) provide the records to the Commission upon request.

§4.192. Special Waste Authorization.

(a) Section 3.30(e) of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)) provides a means by which certain oil and gas waste may be managed at an appropriate TCEQ-regulated facility and by which certain TCEQ-jurisdictional waste may be managed at an appropriate RRC-regulated facility.

(b) A Special Waste Authorization approved by both agencies is required before oil and gas waste can be managed at a TCEQ-regulated facility or before TCEQ-jurisdictional waste can be received at an RRC-regulated facility.

(c) The Commission shall create a Special Waste Authorization Form suitable for these purposes.

§4.193. Oil and Gas Waste Haulers.

(a) Prohibitions. A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated without a valid oil and gas waste hauler permit. A permittee under this division shall not gather oil, gas, or geothermal resources unless otherwise authorized by Commission rules. An oil and gas waste hauler shall not transport oil, gas, or geothermal resources in the same vehicle being used to transport oil and gas wastes other than incidental volumes of skim oil normally present in produced water or other oil and gas wastes.

(b) Exclusions.

(1) Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq.), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USC §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) is excluded from this section.

(2) Hauling of oil and gas NORM waste that is not exempt from Subchapter F of this title (relating to Oil and Gas NORM) and that exceeds the exemption criteria specified in 25 Texas Administrative Code §289.259(d)(1), (2), and (3) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), is excluded from this section.

(c) Application. An application for an oil and gas waste hauler permit shall be made in an electronic system established by the Commission. The application shall include:

(1) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements);

(2) vehicle identification information to support Commission issuance of an approved vehicle list;

(3) an affidavit from the operator of each commission-permitted waste facility the hauler intends to use stating that the hauler has permission to use the waste facility system;

(4) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul oil and gas waste are designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste; and

(5) any other information required by the Commission.

(d) Permit term.

(1) An oil and gas waste hauler permit may be issued for a term not to exceed one year.

(2) A waste hauler permittee may not apply to renew a permit using the permittee's assigned permit number and by paying the fee required by §3.78 of this title until a minimum of 60 days before the expiration date specified in the permit.

(3) A waste hauler permittee shall apply for a new waste hauler permit number if the permittee submits a renewal application more than six months after the expiration of its permit.

(e) Permit conditions. Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit, which are restated as follows.

(1) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.

(2) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.

(3) Each vehicle shall carry a copy of the permit including those parts of the Commission-issued attachments listing approved vehicles. This permit authority is limited to those vehicles shown on the Commission-issued list of approved vehicles.

(4) This permit is issued pursuant to the information furnished on the Commission-prescribed application form, and any change in conditions shall be reported to the Commission on an amended application form. The permit authority will be revised as required by the amended application.

(5) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.

(6) This permit authorizes the permittee to use Commission-permitted waste facilities provided the waste facilities are permitted to receive the specific type of waste being hauled.

(7) This permit also authorizes the permittee to use a waste facility operated under authority of a minor permit issued by the Commission.

(8) This permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) provided the shipment is accompanied by a manifest that meets the requirements of §3.98(o) or (w) of this title as applicable.

(9) This permit authorizes the transportation of non-hazardous oil and gas waste to a disposal facility permitted by another state agency, another state, or an agency of the federal government, provided the shipment is accompanied by a manifest, run ticket, or shipping paper and the person submits a copy of such manifest, run ticket, or shipping paper showing the information specified in §4.191 of this title (relating to Oil and Gas Waste Manifests) to the appropriate Commission District Office within 30 days of shipment.

(10) Each vehicle shall be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation on or off any facility regulated by the Commission. Vehicles used to haul oil and gas waste shall be designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste.

(11) Each vehicle shall be made available for inspection upon request by the Commission.

§4.194. Recordkeeping.

(a) Generators, waste haulers, and receivers shall keep all waste profiles, manifests, and other documentation for a period of at least three years. The person keeping any records required by this section shall make the records available to the Commission upon request.

(b) Upon discovering any significant discrepancy in waste descriptions, volumes, place of origin, disposal locations or destinations, or other information based on personal observation or information contained in the manifest or electronic system, the receiver shall submit to the Commission, the generator, and the waste hauler a letter describing the discrepancy and a copy of the manifest or electronic system documentation.

§4.195. Waste Originating Outside of Texas.

Notwithstanding the provisions of §4.190 through §4.192 of this title (relating to Oil and Gas Waste Characterization and Documentation; Oil and Gas Waste Manifests; and Special Waste Authorization, respectively), oil and gas waste that is generated outside of Texas and transported into Texas for management shall be accompanied by documentation including the name of the generator, the location of origin, and any operator and facility identifiers issued by the appropriate regulatory agency of that state to ensure the origin of the waste is accurately identified and possession of the waste is tracked.

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DIVISION 11. REQUIREMENTS FOR SURFACE WATER PROTECTION

16 TAC §4.196, §4.197

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.196. Surface Water Pollution Prevention.

(a) An operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage aquatic life therein.

(b) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. The following procedures shall be utilized to prevent pollution.

(1) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.

(2) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into surrounding water. These drip pans shall be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.

(3) Solid wastes such as cans, bottles, any form of trash, or ashes of combustible waste shall be transported to shore in appropriate containers.

(4) Drilling muds which contain oil shall be transported to shore or a designated area for disposal.

(5) Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent discharge of pollutants to the Texas offshore and adjacent estuarine zones.

(6) Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action shall be taken or notification made to eliminate further pollution. The operator shall then transmit the report to the appropriate Commission District Office.

(7) Immediate corrective action shall be taken in all cases where pollution has occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shoreline where it is found. Such removal operations will be at the expense of the responsible operator.

(c) The Commission may suspend producing and/or drilling operations from any facility if the provisions of this rule are being violated.

(d) The requirements of this section shall also apply to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.

§4.197. Consistency with the Texas Coastal Management Program.

(a) Applicability. The provisions of this section apply only to activities that occur in the coastal zone and that are subject to the Coastal Management Program (CMP) rules in 31 Texas Administrative Code Chapters 26 through 29.

(1) Disposal of oil and gas waste in pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone.

(A) No commercial oil and gas waste disposal pit constructed after October 25, 1995, shall be located in any coastal natural resources area (CNRA).

(B) All oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Development in critical areas. The provisions of this paragraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.23(a)(1) - (7) (relating to Policies for Development in Critical Areas) have been satisfied. The Commission shall coordinate its efforts under this section with those of other appropriate state and federal agencies.

(3) Dredging and dredged material disposal and placement. The provisions of this section apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.25 (relating to Policies for Dredging and Dredged Material and Placement) have been satisfied.

(b) Consistency determinations. The provisions of this subsection apply to issuance of determinations required under 31 Texas Administrative Code §29.30 (relating to Agency Consistency Determination) for the following actions listed in 31 Texas Administrative Code §29.11(a)(3) (relating to Actions and Rules Subject to the Coastal Management Program): permits to dispose of oil and gas waste in a pit; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

(1) The Commission shall issue consistency determinations under this subsection as an element of the permitting process for permits to dispose of oil and gas waste in a pit.

(2) Prior to issuance of a permit or certification covered by this subsection, the Commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of subsection (a) of this section that are applicable to such activity.

(A) If the Commission determines that issuance of a permit or a certification covered by this subsection would not result in direct and significant adverse effects to any coastal natural resource area (CNRA) identified in the provisions of subsection (a) of this section that are applicable to the proposed activity, the Commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action will not have a direct and significant adverse effect on any coastal natural resource area (CNRA) identified in the applicable policies."

(B) If the Commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse effects to a CNRA identified in the provisions of subsection (a) of this section that are applicable to the proposed activity, the Commission shall determine whether the proposed activity would meet the applicable requirements of subsection (a) of this section.

(i) If the Commission determines that the proposed activity would meet the applicable requirements of subsection (a) of this section, the Commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."

(ii) If the Commission determines that the proposed activity would not meet the applicable requirements of subsection (a) of this section, the Commission shall not issue the permit or certification.

(c) Thresholds for referral. Any Commission action that is not identified in this subsection shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to 31 Texas Administrative Code §29.32 (relating to Requirements for Referral of a Proposed Agency Action), the thresholds for referral of consistency determinations issued by the Commission are as follows:

(1) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;

(2) for certification of federal permits for development in critical areas:

(A) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:

(i) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or

(ii) five acres or more of any other critical area; and

(B) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area; and

(3) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.

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SUBCHAPTER B. COMMERCIAL RECYCLING
DIVISION 1. GENERAL; DEFINITIONS

16 TAC §§4.201 - 4.209, 4.211

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.201. Purpose.

(a) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting and operating standards and requirements for commercial recycling of [~~oil and gas~~] wastes associated with activities governed by the Commission including those governed under: [~~the jurisdiction of the Commission.~~]

(1) Texas Natural Resources Code Title 3, Subtitle B;

(2) Texas Natural Resources Code Title 3, Subtitle D, Chapters 121-123;

(3) Texas Natural Resources Code Title 5;

(4) Texas Health and Safety Code Chapter 382, Subchapter K; and

(5) Texas Water Code Chapters 26, 27 and 29.

(b) Other wastes described in subsection (a) of this section are included when this subchapter refers to oil and gas waste(s) and may be managed in accordance with the provisions of this subchapter at facilities authorized under this subchapter provided the wastes are nonhazardous and chemically and physically similar to oil and gas wastes.

(c) [~~(b)~~] No person conducting activities subject to this subchapter may cause or allow pollution of surface or subsurface water in the state.

(d) [~~(c)~~] The provisions of this subchapter do not supersede other Commission regulations relating to oil field fluids or oil and gas waste.

§4.202. Applicability and Exclusions.

(a) The provisions of this subchapter apply to the following categories of commercial recycling:

(1) on-lease commercial recycling of solid oil and gas waste;

(2) off-lease or centralized commercial solid oil and gas waste recycling;

(3) stationary commercial solid oil and gas waste recycling;

(4) off-lease commercial recycling of fluid; and

(5) stationary commercial recycling of fluid.

(b) The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by Subchapter A of this chapter [§3.8 of this title (relating to Water Protection); §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials);] or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste).

[(c) The provisions of this subchapter do not apply to non-commercial fluid recycling. Such recycling is subject to the requirements of §3.8 of this title].

(c) [(d)] The permitting provisions of this subchapter do not apply to the recycling of fluid received at a commercial disposal well operated pursuant to permit issued under §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).[;] Such recycling is authorized by this subchapter provided:

(1) the operator of the disposal well treats, or contracts with a person for the treatment of the fluid;

(2) the operator of the disposal well is responsible for all activities, including the recycling, that occurs on the lease;

(3) the operator has obtained the applicable permits for pits or waste management units at the lease;

(4) the operator [and] has obtained financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements);

(5) the operator provides written notification to the District Office [appropriate district office] seven days before recycling operations are expected to begin and includes information on how fluids will be controlled and contained during recycling operations; and

(6) the operator provides written notification to the District Office [appropriate district office] within seven days of concluding recycling operations. [Such recycling is authorized by this subchapter.]

(d) [(e)] The provisions of this subchapter are in addition to the permitting requirements of Subchapter A of this chapter [§3.8 of this title], which requires a permit for any pit not specifically authorized in Division 3 of Subchapter A of this chapter [the rule].

(e) [(f)] The provisions of this subchapter do not authorize discharge of oil and gas waste.

(f) [(g)] The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

(g) Permits issued pursuant to this subchapter prior to July 1, 2025, shall remain in effect pursuant to the rules in existence at the time the permits were issued and the requirements of the permits themselves, including the requirements for permit renewal. However, the Director may consider the operational, monitoring, and closure requirements on a case-by-case basis.

§4.203. Responsibility for Management of Waste to be Recycled.

(a) Permit required. A person who operates a commercial recycling facility shall obtain a permit from the Commission under this subchapter before engaging in such operation.

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste for commercial recycling permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §4.193 [§3.8(f)] of this title (relating to Oil and Gas Waste Haulers [Water Protection]).

(c) Responsibility of generator and carrier. No generator or carrier may knowingly use the services of a commercial recycling facility unless the facility has a permit issued under this subchapter. A person who plans to use the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all permits required by statute or Commission rule.

§4.204. Definitions.

Unless a word or term is defined differently in this section, the definitions in Subchapter A of this chapter [§3.8 of this title (relating to Water Protection)], §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), and §4.603 of this title (relating to Definitions), shall apply in this subchapter. In addition, the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

[(1) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year.]

(1) [(2)] Adjoining--Every tract of property surrounding the tract of property upon which the activity sought to be permitted will occur, including those tracts that meet only at a corner point.

(2) Administratively complete--A complete application that the Director has determined meets all the administrative and technical requirements of the subchapter such that a permit shall be issued administratively or, if the application was protested, that the application will be referred to the Hearings Division.

(3) Berm (or dike)--A manmade barrier surrounding a pit, waste management unit, or facility, that is designed, constructed, and maintained to segregate materials, including waste and stormwater runoff, inside and outside of a pit, waste management unit, or facility.

(4) [(3)] Commercial recycling facility--A facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and the primary business purpose of the facility is to provide these services for compensation, whether from the generator of the waste, another receiver, or the purchaser of the recyclable product produced at the facility. The term includes [Includes] recycling of solid oil and gas wastes on or off lease. [Does not include non-commercial fluid recycling as defined in §3.8 of this title.]

[(4) Commission--The Railroad Commission of Texas.]

(5) Complete application--An application that contains information addressing each application requirement of the subchapter and all information necessary to initiate the final review by the Director.

[(5) Director--The director of the Commission's Oil and Gas Division or the director's delegate.]

(6) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)--An analytical method used to evaluate the potential for leaching of metals and/or benzene into surface and subsurface water.

(7) Legitimate commercial product--A product of a type customarily sold to the general public for a specific use and for which there is a demonstrated commercial market.

(8) [(7)] Legitimate commercial use--Use or reuse of a recyclable product as authorized or defined in a permit issued pursuant to this subchapter:

(A) as an effective substitute for a commercial product or as an ingredient to make a commercial product; or

(B) as a replacement for a product or material that otherwise would have been purchased; and

(C) in a manner that does not constitute disposal.

(9) [(8)] Louisiana Department of Natural Resources Leachate Test Method--An analytical method designed to simulate water leach effects on treated oil and gas wastes included in "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May 2005.

(10) Off-lease or centralized commercial solid oil and gas waste recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle solid oil and gas waste.

(11) Off-lease commercial fluid recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

(12) [(9)] On-lease commercial solid oil and gas waste recycling--Commercial recycling performed on an oil or gas lease or well site using equipment that moves from one location to another, at which all materials and wastes are stored in authorized pits and/or tanks, and restricted in the:

(A) amount of time, generally less than one year, operations occur at any one location;

(B) volume and source of the waste that may be processed at any one location;

(C) the type and characteristics of the waste; and

(D) size of the area used for recycling.

[(10) Oil and gas wastes--For purposes of this subchapter, this term means materials which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, and materials which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).]

[(11) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.]

[(12) Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.]

[(13) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).]

[(14) Off-lease or centralized commercial solid oil and gas waste recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle solid oil and gas waste.]

[(15) Off-lease commercial fluid recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.]

[(16) Solid oil and gas waste--Oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.]

(13) [(17)] Stationary commercial recycling facility--A commercial recycling facility in an immobile, fixed location for a period of greater than two years that recycles solid oil and gas waste or wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

(14) Treatment--The process of reconditioning oil and gas waste to a reusable form.

(15) Treatment of drill cuttings--A manufacturing, mechanical, thermal, or chemical process other than sizing, shaping, diluting, or sorting.

§4.205. Exceptions.

(a) Except for the requirements related to financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b) of this title; the notice requirements found in §§4.238, 4.254, 4.270, and 4.286 of this title; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291 of this title, an applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director [director] a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested.

(b) Each application for an exception to a rule in this subchapter shall be accompanied by the exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial Security Requirements).

(c) The Director [director] shall review each written request on a case-by-case basis.

(1) If the Director determines that a request for an exception to a rule in Divisions 5 or 6 of this subchapter (relating to Requirements for Off-Lease Commercial Recycling of Fluid, and Requirements for Stationary Commercial Recycling of Fluid, respectively) is substantially similar to previous exceptions approved by the Commission, the Director shall approve the requested exception.

(2) If the Director [~~director~~] denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but shall not [~~may not~~] use the requested alternative until the alternative is approved by the Commission.

§4.206. Administrative Decision on Permit Application.

(a) If the Commission does not receive a protest to an application submitted under this subchapter, the Director [~~director~~] may administratively approve the application if the application otherwise complies with the requirements of this subchapter.

(b) The Director [~~director~~] may administratively deny the application if it does not meet the requirements of this subchapter or other laws, rules, or orders of the Commission. The Director [~~director~~] shall provide the applicant written notice of the basis for administrative denial.

(c) The applicant may request a hearing upon receipt of notice of administrative denial. A request for hearing shall be made to the Director [~~director~~] within 30 days of the date on the notice of administrative denial. If the Director [~~director~~] receives a request for a hearing, the Director [~~director~~] shall refer the matter to the Docket Services Section of the Hearings Division [~~Office of General Counsel~~] for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

§4.207. Protests and Hearings.

(a) If a person who receives notice or other affected person files a proper protest with the Technical Permitting Section [~~Commission~~], the Director [~~director~~] shall give the applicant written notice of the protest and of the applicant's right to either request a hearing on the application or withdraw the application. The applicant shall have 30 days from the date of the Director's [~~director's~~] notice to respond, in writing, by either requesting a hearing or withdrawing the application. In the absence of a timely written response from the applicant, the Director [~~director~~] shall consider the application to have been withdrawn.

(b) Even if there is no protest filed, the Director [~~director~~] may refer an application to a hearing if the Director [~~director~~] determines that a hearing is in the public interest. In determining whether a hearing is in the public interest, the Director [~~director~~] will consider the characteristics and volume of oil and gas waste to be managed [~~stored, handled and treated~~] at the facility; the potential risk posed to surface and subsurface water; and any other factor identified in this subchapter relating to siting, construction, and operation of the facility.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

§4.208. General Standards for Permit Issuance.

(a) A permit for a commercial recycling facility issued pursuant to this subchapter shall provide that the facility shall only receive, store, handle, treat, or recycle waste:

(1) under the jurisdiction of the Commission;

(2) that is not a hazardous waste as defined by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code, §6901, et seq.); and

(3) that is not oil and gas naturally occurring radioactive (NORM) waste as defined in §4.603 of this title (relating to Definitions).

(b) A permit issued pursuant to this subchapter may be issued only if the Director [~~director~~] or the Commission determines that:

(1) the storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) the recyclable product can meet engineering and environmental standards the Commission establishes in the permit or in this subchapter for its intended use.

(c) All chemical laboratory analyses shall be performed using appropriate Environmental Protection Agency methods or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory neither owned nor operated by the permittee. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by the ASTM International (ASTM) and certified by a professional engineer licensed in Texas.

§4.209. Permit Renewal.

Permits issued pursuant to this subchapter may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~].

§4.211. Penalties.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement without cause. Operators may correct violations at a facility with approval of Commission staff before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the facility's history of previous violations;

(2) the operator's history of previous violations;

(3) the seriousness of the violation;

(4) any hazard to the health or safety of the public; and

(5) the demonstrated good faith of the operator charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.
Figure: 16 TAC §4.211(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the operator charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.
Figure: 16 TAC §4.211(f)

(g) Penalty enhancements for certain violators. For violations in which the operator charged has a history of prior violations within seven years of the current enforcement action at any facility regulated by the Commission, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §4.211(g)
Figure 2: 16 TAC §4.211(g)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the operator charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the operator charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the operator charged. Demonstrated good faith includes, but is not limited to, actions taken by the operator charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §4.211(j)

[~~Violations of this subchapter or a permit issued pursuant to this subchapter may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes or rules administered by 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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Haley Cochran
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Railroad Commission of Texas
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DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

16 TAC §§4.212 - 4.214, 4.218 - 4.224

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.212. General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities.

(a) An application for a permit for on-lease solid oil and gas waste commercial recycling shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin~~]. The Technical Permitting Section shall not

begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.213. Minimum Engineering and Geologic Information.

(a) The Director [~~director~~] may require a permit applicant for on-lease commercial solid oil and gas waste recycling to provide the Commission with engineering[~~,~~] or other information which the Director [~~director~~] deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively [~~Chapter 1001~~].

§4.214. Minimum Design and Construction Information.

A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) a facility diagram [~~the typical layout and design~~] of receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, and dikes.

(2) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(3) a map view and two perpendicular cross-sectional views of typical pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; and

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design.

§4.218. General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall specify the Commission districts within which recycling is authorized, shall be valid [~~issued~~] for a term of not more than five years, and shall authorize operations at any one lease for no more than one year. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [~~director~~]. Any request for transfer of the [~~this~~] permit shall [~~should~~] be filed with the Technical Permitting Section on a Commission prescribed form [~~Oil and Gas Division in Austin~~] at least 60 days before the permittee requests [~~wishes~~] the transfer to take place.

(b) A permit for on-lease commercial solid oil and gas waste recycling shall include a condition requiring that the permittee obtain written permission from the surface owner of the lease upon which recycling will take place and notify the [~~appropriate~~] Commission District Office [~~district office~~] 72 hours before operations commence on each lease.

§4.219. Minimum [~~Permit Provisions for~~] Siting Information.

(a) A permit for on-lease commercial solid oil and gas waste recycling may be issued only if the Director [~~director~~] or the Commission determines that the operations will pose no unreasonable risk of pollution or threat to public health or safety.

(b) A pit [~~On-lease commercial solid oil and gas waste recycling~~] permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~]:

(1) within a 100-year flood plain;[~~, in a streambed, or~~]

(2) within [~~in~~] a sensitive area as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); [~~or~~]

(3) [~~(2)~~] within 300 [~~150~~] feet of surface water [~~or public~~], domestic supply wells, or irrigation water wells;[~~.~~]

(4) within 500 feet of any public water system wells or intakes;

(5) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL);

(6) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of initial permitting; or

(7) within 500 feet of a wetland.

(c) A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, and telephone number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

(d) [~~(c)~~] Factors that the Commission will consider in assessing potential risk from on-lease commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or[,] sensitive areas as defined by §4.110 [~~§3.91~~] of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(e) [~~(d)~~] All siting requirements in this section for on-lease commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.220. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for on-lease commercial solid oil and gas waste recycling shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the operator [~~permittee~~] control and remediate spills; and

(C) requiring that the operator [~~permittee~~] make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material.

(b) All storage cells at the site shall be:

(1) located above the top of the seasonal high water table;

(2) designed to prevent stormwater runoff from entering the area; and

(3) surrounded by berms with a minimum width at base of three times the height and the berms constructed such that the height, slope, and construction material are structurally sound and do not allow seepage.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall require that the operator [~~permittee~~] notify the [~~appropriate~~] Commission District Office [~~district office~~] prior to commencement of construction, including construction of any dikes, and again upon completion of construction, and that the permittee may commence operations under the permit 72 hours after notice to the District Office [~~appropriate district office~~].

§4.221. Minimum Permit Provisions for Operations.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit generated on-lease, including requirements that the permittee test incoming oil and gas waste and keep records of amounts of wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for on-lease commercial solid oil and gas waste recycling issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission District Office [district office] for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [director] for review a report of the results of the trial run prior to commencing operations.

(3) The permittee shall demonstrate the ability to successfully process a 1,000 cubic yard batch of solid oil and gas waste.

(A) The Technical Permitting Section [Oil and Gas Division in Austin] and the [appropriate] District Office shall [must] be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles shall [may] not exceed 15 percent.

(C) A written report of the trial run shall be submitted to the Technical Permitting Section [Oil and Gas Division in Austin] and the District Office [appropriate district office] within 60 days of receipt of the analyses required in this section. The following information shall [must] be included:

(i) a summary of the trial run and description of the process;

(ii) [(i)] the actual volume of waste material processed;

(iii) [(ii)] the volume and type of stabilization material used;

(iv) [(iii)] the type of waste and description of the waste material [copies of all lab analyses required by this section]; and

(v) [(iv)] copies of all chemical and geotechnical laboratory analytical reports and chain of custody sheets for the samples specified in [the results of the analysis required under] subparagraph (B) of this paragraph.

(D) The final processed material shall [must] meet the limitations of this section.

(4) The Director [director] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the Director [director] approves the trial run report.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the site, that the Technical Permitting Section [Commission] determines to be reasonably necessary to ensure that the permittee does not accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) Excess stormwater [rainwater] collected within a bermed area shall be removed and disposed of in an authorized manner.

(e) Appropriate measures shall be taken to control dust at all times.

(f) Processed material meeting or exceeding the engineering [process control] parameters listed in §4.222(d) of this title (relating to Minimum Permit Provisions for Monitoring) is suitable for use on lease roads, drilling pads, tank batteries, compressor station pads, and county roads.

§4.222. Minimum Permit Provisions for Monitoring.

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include monitoring requirements the Director [director] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [director] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [director] or the Commission shall establish and include in the permit for on-lease commercial solid oil and gas waste recycling the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste; and

(2) the intended use for the recyclable product.

(c) A permit for on-lease commercial solid oil and gas waste recycling may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this subchapter or in a permit issued by the Commission.

(d) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yard composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.222(d) (No change.)

(e) Recordkeeping and reporting requirements.

(1) Recordkeeping requirements.

(A) Records shall [must] be kept of all waste treated for a period of three years from the date of treatment.

(B) These records shall [must] include the following:

(i) name of the generator;

(ii) source of the waste (lease number or gas I.D. number and well number, or API number);

(iii) date the waste was treated at the drill site;

(iv) volume of the waste treated at the drill site;

(v) name of the carrier;

(vi) identification of the receiving site including the lease number or gas I.D. number and well number, API number, or county road number;

(vii) documentation that the landowner of the receiving location has been notified of the use of the recyclable product on the landowner's property if used on private land; and

(viii) documentation indicating the approximate location where recyclable product is used including a topographic map showing the location of the area.

(2) Reporting requirements. The permittee shall provide the Commission, on a quarterly basis, a copy of the records required in this section.

§4.223. Minimum Permit Provisions for Closure.

A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division [~~subchapter~~] shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples; and post-closure monitoring.

§4.224. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the operator's [~~permittee's~~] permit number and facility identification number assigned by the Technical Permitting Section. The application for renewal shall include details of proposed changes or shall state that there are no changes proposed that would require amendment of the permit other than the expiration 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.

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DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING

16 TAC §§4.230 - 4.232, 4.234, 4.238 - 4.243, 4.245

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.230 General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling.

(a) An application for a permit for off-lease or centralized commercial solid oil and gas waste recycling shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin~~]. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.231. Minimum Engineering and Geologic Information.

(a) The Director [~~director~~] may require a permit applicant for off-lease or centralized commercial solid oil and gas waste recycling to provide the Commission with engineering, geological, or other information which the Director [~~director~~] deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional

[~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.232. Minimum Siting Information.

(a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address,[~~;~~] and telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

[~~(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.~~]

(b) A pit permitted pursuant to this division is prohibited:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL);

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes;

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(c) Factors that the Commission will consider in assessing potential risk from on off-lease or centralized commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste, and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for on-lease off-lease or centralized commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.234. Minimum Design and Construction Information.

(a) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) if the application is for a stationary commercial recycling facility, a plan for the installation of monitoring wells at the facility unless waived by the Technical Permitting Section under §4.241(d) of this title (relating to Minimum Permit Provisions for Operations).

§4.238. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct an off-lease or centralized commercial solid oil and gas waste recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for an off-lease or centralized commercial solid oil and gas waste recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located;

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail.

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of solids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date of notice or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is provided.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

[(a) A permit applicant for off-lease or centralized commercial solid oil and gas waste recycling shall give personal notice and file proof of such notice in accordance with the following requirements.]

[(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:]

[(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;]

[(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;]

[(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum Real Property Information); and]

[(D) any affected person or class of persons that the director determines should receive notice of a particular application.]

[(2) Personal notice of the permit application shall consist of:]

[(A) a copy of the application;]

[(B) a statement of the date the applicant filed the application with the Commission;]

[(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;]

[(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;]

[(E) the name of the owner or owners of the property on which the facility is to be located;]

[(F) the name of the applicant;]

[(G) the type of fluid or waste to be handled at the facility; and]

[(H) the recycling method proposed and the proposed end-use of the recycled material.]

[(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.]

[(b) If the director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.]

§4.239. General Permit Provisions.

(a) A permit for an off-lease or centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall be valid [issued] for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [director].

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, the facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [appropriate] Commission District Office [district office] before recycling operations commence.

§4.240. Minimum Permit Provisions for Siting.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may be issued only if the Director [director] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) An off-lease centralized commercial solid oil and gas waste recycling facility permitted pursuant to this division is prohibited [and after the effective date of this division shall not be located] within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from an off-lease centralized commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources or[,] sensitive areas as defined by §4.110 [§3.91] of this title (relating to Definitions [Cleanup of Soil Contaminated by a Crude Oil Spill]), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for an off-lease centralized commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.241. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for an off-lease centralized commercial solid oil and gas waste recycling facility shall

contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment berms [~~dikes~~], and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the operator [~~permittee~~] control spills at the facility; and

(C) requiring that the operator [~~permittee~~] make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) submit to the Technical Permitting Section [~~Commission's office in Austin~~] a soil boring log and other information for each well, unless waived by the Technical Permitting Section under §4.241(d) of this title (relating to Minimum Permit Provisions for Operations).

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [~~director~~] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.242. Minimum Permit Provisions for Operations.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.243. Minimum Permit Provisions for Monitoring.

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for an off-lease centralized commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yards composite for the following minimum parameters and meet the following limits:
Figure: 16 TAC §4.243(d) (No change.)

§4.245. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.230 of this title (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling), and the notice requirements of §4.238 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.231 - 4.237 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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

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DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING FACILITIES

16 TAC §§4.246 - 4.248, 4.250, 4.251, 4.254 - 4.259, 4.261

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.246. General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility.

(a) An application for a permit for a stationary commercial solid oil and gas waste recycling facility shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application. After the second supplemental submission, if the application is complete, the Director shall either approve or deny the application. If the application is still incomplete after the second supplemental submission, the Director shall administratively deny the application. The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(d) The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.247. Minimum Engineering and Geologic Information.

(a) The Director [~~director~~] may require a permit applicant for a stationary commercial solid oil and gas waste recycling facility to provide [~~the Commission with~~] engineering, geological, or other information which the Director [~~director~~] deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.248. Minimum Siting Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, and[~~;~~] telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution

[~~(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information~~].

(b) A pit permitted under this division is prohibited:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL);

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes;

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(c) Factors that the Commission will consider in assessing potential risk from stationary commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for stationary commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.250. Minimum Design and Construction Information.

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a stationary commercial solid oil and gas waste recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.251. Minimum Operating Information.

A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission District Office [~~district~~];

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

§4.254. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct stationary commercial solid oil and gas waste recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for a stationary commercial solid oil and gas waste recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located;

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail.

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of solids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Notice by publication. In addition to the notice required by subsection (d) of this section, an applicant for a stationary commercial solid oil and gas waste recycling commercial facility permit shall also provide notice by publication.

(g) Newspaper of general circulation. The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) but before the final review is completed.

(h) Contents of published notice. The published notice shall:

(1) be entitled "Notice of Application for Commercial Solid Oil and Gas Waste Recycling Facility" if the proposed facility is a commercial facility;

(2) provide the date the applicant filed the application with the Commission;

(3) identify the name of the applicant;

(4) provide the location of the tract on which the proposed facility will be located including the legal description of the property, latitude/longitude coordinates of the proposed facility, county, name of the original survey and abstract number, and location and distance in relation to the nearest municipality or community;

(5) identify the owner or owners of the property on which the proposed facility will be located;

(6) identify the type of fluid or solid waste to be managed at the facility;

(7) identify the proposed recycling method;

(8) state that affected persons may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication;

(9) include the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(10) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(i) Proof of notice. The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(1) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(2) the tear sheets for each published notice.

(j) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date of notice or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is provided or within 30 calendar days of the last date of publication, whichever is later.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

(k) Director review. If the Director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

~~[(a) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall publish notice and file proof of publication in accordance with the following requirements.]~~

~~[(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the~~

30th day after the date on which the application is filed with the Commission.]

[(2) The published notice shall:]

[(A) be entitled, "Notice of Application for Commercial Solid Oil and Gas Waste Recycling Facility";]

[(B) provide the date the applicant filed the application with the Commission for the permit;]

[(C) identify the name of the applicant;]

[(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;]

[(E) identify the owner or owners of the property upon which the proposed facility will be located;]

[(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and]

[(G) provide the address to which protests may be mailed.]

[(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.]

[(b) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.]

[(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:]

[(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;]

[(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;]

[(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information); and]

[(D) any affected person or class of persons that the director determines should receive notice of a particular application.]

[(2) Personal notice of the permit application shall consist of:]

[(A) a copy of the application;]

[(B) a statement of the date the applicant filed the application with the Commission;]

[(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;]

[(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;]

[(E) the name of the owner or owners of the property on which the facility is to be located;]

[(F) the name of the applicant;]

[(G) the type of fluid or waste to be handled at the facility; and]

[(H) the recycling method proposed and the proposed end-use of the recycled material.]

[(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.]

[(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.]

§4.255. General Permit Provisions.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall be issued for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [director].

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, a stationary commercial solid oil and gas waste recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [appropriate] Commission District Office [district office] before recycling operations commence on each tract.

§4.256. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility may be issued only if the Director [director] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial solid oil and gas waste recycling facility permitted pursuant to this division is prohibited [and after the effective date of this division shall not be located]:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §4.110 [§3.91] of this title (relating to Definitions [Cleanup of Soil Contaminated by a Crude Oil Spill]); or

(2) within 300 [150] feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) depth to and quality of the shallowest groundwater;

(3) distance to the nearest property line or public road;

(4) proximity to coastal natural resources or[,] sensitive areas as defined by §4.110 [§3.91] of this title, or surface water and/or public, domestic, or irrigation water wells; and

(5) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for a stationary commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

§4.257. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial solid oil and gas waste recycling facility shall contain any requirement that the Director [director] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [storm water] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control and remediate spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial solid oil and gas waste recycling facility pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.257(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) submit to the Technical Permitting Section [Commission's office in Austin] a soil boring log and other information for each well, if required by the Technical Permitting Section.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [director] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office [district office] for the county in which the facility is located prior to commencement of construction, including construction of any berms [dikes], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

§4.258. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the District Office [appropriate district office] for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall demonstrate the ability to successfully process a 1,000 [one thousand] cubic yard batch of solid oil and gas waste.

(A) The Technical Permitting Section [Oil and Gas Division in Austin] and the District Office shall [appropriate district office must] be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall [must] be collected and analyzed as required by §4.243 of this title (relating to Minimum Permit Provisions for Monitoring).

(C) Samples shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples

are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(3) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(4) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(6) A written report of the trial run shall be submitted to the Technical Permitting Section [~~Oil and Gas Division in Austin~~] and the District Office [~~appropriate district office~~] within 60 days of receipt of the analyses required in §4.243 of this title. The following information shall [~~must~~] be included:

(A) the actual volume of waste material processed;

(B) the volume of stabilization material used;

(C) copies of all lab analyses required by §4.243 of this title; and

(D) the results of the analysis required under paragraph (2)(C) of this subsection.

(7) The final recyclable material shall [~~must~~] meet the limitations of §4.243 of this title.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

§4.259. Minimum Permit Provisions for Monitoring.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the Director [~~director~~] or the Commission shall establish and include in the permit for a stationary commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 tons of partially treated waste be collected and analyzed for every 800 ton composite for the following minimum parameters and meet the following limits:

Figure: 16 TAC §4.259(d) (No change.)

(e) Groundwater monitor wells.

(1) Groundwater monitor wells, if required, shall [~~must~~] be monitored for the following parameters after installation and quarterly thereafter:

(A) static water level;

(B) benzene;

(C) total petroleum hydrocarbons (TPH);

(D) total dissolved solids (TDS);

(E) chlorides;

(F) bromides;

(G) sulfates;

(H) nitrates;

(I) carbonates;

(J) calcium;

(K) magnesium;

(L) sodium; and

(M) potassium.

(2) Copies of the sampling and analytical results shall be filed semi-annually with the Technical Permitting Section [~~Oil and Gas Division~~] and the District Office [~~appropriate district office~~].

§4.261. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.246 of this title (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), and the notice requirements of §4.254 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.247 - 4.253 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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 August 16, 2024.

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DIVISION 5. REQUIREMENTS FOR OFF-LEASE COMMERCIAL RECYCLING OF FLUID

16 TAC §§4.262 - 4.264, 4.266 - 4.277

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.262. General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid.

(a) An application for a permit for off-lease commercial recycling of fluid shall be filed on a Commission prescribed form with the Technical Permitting Section, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall determine that the application is administratively complete prior to administratively approving an application or referring an application to hearing. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application.

(1) An applicant may make no more than two supplemental filings to complete an application.

(2) After the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be:

(A) approval if the application meets the requirements of this division and the application has not been protested;

(B) referral to the Hearings Division if the application meets the requirements of this division and the application has been protested; or

(C) denial if the application does not meet the requirements of this division.

(3) If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(4) The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The Director shall approve or deny a complete application for a permit issued under this division that does not include a request for an exception to the requirements of this division not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed with the Commission, in which case the Commission may extend the amount of time to approve or deny the application in order to allow for a public hearing on the application pursuant to Chapter 1 of this title (relating to Practice and Procedure). If the Director does not approve or deny the application before that date, the permit application is considered approved, and the applicant may operate under the terms specified in the application for a period of one year.

(e) [~~(d)~~] The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(f) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.263. Minimum Engineering and Geologic Information.

(a) A [~~The director may require a~~] permit applicant for off-lease commercial recycling of fluid shall include [~~to provide the Commission with~~] engineering, geological, or other information [~~which the director deems~~] necessary to:

(1) describe the subsurface geology underlying the facility to a depth of at least 100 feet, including the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) describe the subsurface hydrogeology underlying the facility to a depth of at least 100 feet, including an assessment of the presence and characteristics of permeable and impermeable strata; and

(3) evaluate the geology, hydrogeology, and proposed engineering design to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Information for engineering and geological site characterization may be obtained from available information or from a site in-

vestigation including installation of soil borings, soil and groundwater sampling, and soil and groundwater analysis. Site-specific investigation information is considered more reliable and, therefore, will have a greater effect on the permit determination.

(c) If an operator intends to establish and later rely on actual background concentrations of contaminants in environmental media, then the operator shall collect site-specific soil and groundwater samples for analysis and include these findings with the application.

(d) [~~(b)~~] Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.264. Minimum Siting Information.

(a) A pit permitted under this division is prohibited:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL);

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes;

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(b) A permit application for off-lease commercial recycling of fluid shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address,[~~;~~] and telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A)-(K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

[~~(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.~~]

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for off-lease commercial recycling of fluid refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.266. Minimum Design and Construction Information.

(a) A pit permitted under this division shall be designed, built, and maintained as follows.

(1) The pit shall contain the material placed in the pit and prevent releases, overflow, or failure.

(2) The maximum depth from the natural surface elevation shall not exceed 22 feet.

(3) The foundation and interior slopes shall consist of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. All interior and exterior surfaces of the pit shall be smooth drum rolled.

(4) The pit sides and berms shall have interior and exterior grades no steeper than three horizontal feet to one vertical foot (3H:1V).

The top of the berm shall be wide enough to provide adequate room for inspection, maintenance, and any other structural or construction requirements.

(A) Fill for berms shall be placed and compacted in continuous lifts with a maximum loose lift thickness of 10 inches, compacted to eight inches.

(B) Berm fill shall be compacted to at least 95% of maximum dry density determined by the Standard Proctor (ASTM D698) and at moisture content within +2% to -2% of optimum moisture content as determined by a standard proctor soil test on samples from the source area. One nuclear density test shall be conducted for each 2,500 cubic yards, and the applicant shall provide compaction testing results upon completion.

(5) Both primary and secondary liners in a pit shall be geomembrane liners composed of ASTM GRI-13 compliant materials and be impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts, and acidic and alkaline solutions. Each pit shall incorporate, at a minimum, a liner system as follows:

(A) The primary liner shall be constructed with a minimum 60-mil high density polyethylene (HDPE) for any pit under this subsection permitted after July 1, 2025.

(B) A leak detection system shall be placed between the primary and secondary geomembrane liners that shall consist of 200-mil biplanar geonet or geo-composite equivalent. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the secondary geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. The leak detection system shall be designed with the capability of removing a minimum of 1,000 gallons of leachate per acre per day or an alternative action leakage rate shall be calculated.

(C) The secondary liner shall be constructed with a minimum 40-mil HDPE for any pit under this subsection permitted after July 1, 2025. If the depth to groundwater is less than 100 feet below the ground surface, the secondary liner shall include a geosynthetic clay liner.

(D) A geotextile (felt) liner shall be placed under the secondary liner and in contact with the prepared ground surface.

(6) The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench that is at least 24 inches deep and shall be performed in accordance with the manufacturer's instructions.

(7) Field seams in geosynthetic material shall be performed in accordance with the manufacturer's instructions and include the following considerations:

(A) Field seams in geosynthetic material shall be minimized and oriented perpendicular to the slope of the berm, not parallel.

(B) Prior to field seaming, the operator shall overlap liners a minimum of four to six inches. The operator shall minimize the number of field seams and corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe.

(C) Qualified personnel shall perform field seam welding and testing. Documented quality assurance/quality control testing reports shall be maintained for the life of the liner.

(8) At a point of discharge into or suction from the pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage.

(9) All piping and equipment that is in contact with the liner shall be secured to prevent liner wear and damage.

(10) There shall be no penetrations of the liner system.

(11) The pit shall be designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. The pit shall be surrounded by a berm, ditch, or other diversion to prevent run-on of any non-contact stormwater, precipitation, or surface water.

(12) The pit shall be designed to operate with a minimum two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(b) Tanks and treatment equipment shall be located within a secondary containment system.

(c) [~~(a)~~] A permit application for off-lease commercial recycling of fluid shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(d) [~~(b)~~] A permit application for off-lease commercial recycling of fluid also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each; [~~and~~]

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of berms [~~dikes~~] and/or storage basins that would collect stormwater [~~storm water~~] from the facility, at a minimum, during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and[~~.~~]

(5) a plan for the installation of monitoring wells at the facility.

§4.267. Minimum Operating Information.

A permit application for off-lease commercial recycling of fluid shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of oil and gas wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number,

API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the health, safety, and environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.268. Minimum Monitoring Information.

A permit application for off-lease commercial recycling of fluid shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions and reuse requirements;

(2) a plan for sampling any monitoring wells at an off-lease commercial recycling of fluid facility as required by the permit and this division; and

(3) a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas, and a schedule for conducting periodic inspections, including plans to inspect pits and liner systems, equipment, processing, and other waste storage areas

§4.269. Minimum Closure Information.

(a) A permit application for off-lease commercial recycling of fluid shall include a closure cost estimate (CCE) sealed by a professional engineer licensed in Texas.

(1) The CCE shall show all assumptions and calculations used to develop the estimate. The following assumptions are required:

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, under which collecting pits shall be dewatered, emptied and demolished prior to backfilling; all remaining waste will be disposed of at an authorized facility; and the facility will be restored to its native state unless otherwise authorized by the permit.

(C) None of the operator's equipment or facilities that may have otherwise been available at the time of closure (e.g., disposal wells, land treatment facilities, trucks, bulldozers, and employees) are available to assist in the closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not assess a salvage value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and all former pits unless closure of an individual pit was previously approved by the Technical Permitting Section.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the property;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon the monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of monitoring.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the perimeter of all pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a site diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which

is described with specificity as to location, type and amount consistent with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on a Commission prescribed form. Once the Commission approves the closure cost and closure plan, the operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the supporting documentation shall show the depth of the excavation is limited to what can be graded to prevent storm water from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(b) A permit application for off-lease commercial recycling of fluid shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.276 of this title (relating to Minimum Permit Provisions for Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage pits, treatment equipment, and associated piping and other storage or waste processing equipment [~~areas/cells~~];

(3) remove berms [~~dikes~~] and equipment;

(4) contour and reseed disturbed areas with geographically appropriate vegetation including the source of water intended to establish the reseeded areas of the facility;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.270. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct a facility for off-lease commercial recycling of facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application for a facility for off-lease commercial recycling of fluid is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located.

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail.

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of fluids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date of notice or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is provided.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

[(a) A permit applicant for off-lease commercial recycling of fluid shall give personal notice and file proof of such notice in accordance with the following requirements.]

[(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:]

[(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;]

[(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;]

[(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information); and]

[(D) any affected person or class of persons that the director determines should receive notice of a particular application.]

[(2) Personal notice of the permit application shall consist of:]

[(A) a copy of the application;]

[(B) a statement of the date the applicant filed the application with the Commission;]

[(C) a statement that a protest to the application should be filed with the Commission within 15 days of the date of receipt and the procedure for making a protest of the application to the Commission;]

[(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;]

[(E) the name of the owner or owners of the property on which the facility is to be located;]

[(F) the name of the applicant;]

[(G) the type of fluid or waste to be handled at the facility; and]

[(H) the recycling method proposed and the proposed end-use of the recyclable product.]

[(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each person was notified of the application.]

[(b) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.]

§4.271. General Permit Provisions.

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall be valid [issued] for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [director].

(b) A permit issued pursuant to this division shall require that, prior to operating, off-lease commercial recycling of fluid comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for off-lease commercial recycling of fluid shall include a condition requiring that the permittee notify the surface owner

of the tract upon which recycling will take place and the [~~appropriate~~] Commission District Office [~~district office~~] before recycling operations commence on each tract.

§4.272. Minimum Permit Provisions for Siting.

(a) A permit for off-lease commercial recycling of fluid may be issued only if the Director [~~director~~] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety. The Director will presume that an application meeting the requirements of §4.264(a) of this title (relating to Minimum Siting Information) does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting, unless extraordinary circumstances indicate otherwise.

(b) Off-lease commercial recycling of fluid permitted pursuant to this division is prohibited [~~and after the effective date of this division shall not be located~~]:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §4.110 [~~§3.91~~] of this title (relating to Definitions [~~Cleanup of Soil Contaminated by a Crude Oil Spill~~]); or

(2) within 300 [~~150~~] feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §4.110 [~~§3.91~~] of this title, or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.273. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division shall contain any requirement that the Director [~~director~~] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated stormwater [~~storm water~~] runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for off-lease commercial recycling of fluid pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.273(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers if required by the Technical Permitting Section; and

(2) if required by [~~submit to~~] the Technical Permitting Section, submit [~~Commission's office in Austin~~] a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [~~director~~] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall require that the permittee notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of construction, including construction of any berms [~~dikes~~], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) An operator shall not locate material excavated during construction:

(1) within 100 feet of a continuously flowing watercourse or significant watercourse;

(2) within 200 feet from a lakebed, sinkhole, stock pond or lake (measured from the ordinary high-water mark), or any other watercourse;

(3) within 100 feet of a wetland; or

(4) within a 100-year floodplain.

(g) The following requirements apply to signage, fencing, and security.

(1) A sign shall be posted at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least three inches in height.

(2) A sign shall be posted identifying the permit number of each pit using letters and numerals at least three inches in height. The signs shall clearly state that the fluid within the pit is not potable or suitable for consumption.

(3) The facility shall maintain security to prevent unauthorized access. Security shall be maintained by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended.

(h) Any pit associated with an off-lease commercial fluid recycling facility permitted pursuant to this division after July 1, 2025, shall comply with the requirements of §4.265(a) of this title (relating to Minimum Design and Construction Information).

§4.274. Minimum Permit Provisions for Operations.

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The operator [~~permittee~~] shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The operator [~~permittee~~] shall sample and analyze the partially treated waste that results from the trial run, and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The operator [~~permittee~~] shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

(e) Oil shall not accumulate on top of the produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through an electronic filing system when implemented by the Commission.

§4.275. Minimum Permit Provisions for Monitoring.

(a) Operational monitoring.

(1) The operator shall inspect the pits, tanks, and processing equipment weekly. The operator shall maintain a current log of such inspections and make the log available for review by the Commission upon request.

(2) The leak detection system shall be monitored on a weekly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is smaller.

(3) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(4) If the primary liner is compromised below the fluid level in the pit, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the District Office, and repair the damage or replace the primary liner with a liner meeting the same levels of protection, at a minimum. The pit shall not be returned to service until the liner has been repaired or replaced and inspected by the District Office.

(5) If the pit's primary liner is compromised above the fluid level in the pit, the operator shall repair the damage or initiate replacement of the primary liner, with a liner meeting the same levels of protection, at a minimum, within 48 hours of discovery or seek an extension of time from the District Office.

(6) If groundwater monitoring wells are required, no waste shall be received at the facility until all permitted groundwater monitoring wells have been completed, developed, and sampled. The documentation of these activities shall be provided to the Commission within 30 days after installation of groundwater monitoring wells. Groundwater samples will be analyzed for the parameters in Figure 1. Figure: 16 TAC §4.275(a)(6)

(7) If an operator has determined the background analyte concentrations in soil and/or groundwater, those site-specific background levels shall be signed and sealed by a professional geoscientist or professional engineer licensed in Texas and, if accepted by the Director, may be included in the permit as appropriate monitoring standards.

(b) Recyclable product monitoring.

(1) [~~(a)~~] A permit for off-lease commercial recycling fluid issued pursuant to this division shall include monitoring requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(2) [~~(b)~~] A permit under this division for use of the treated fluid for any purpose other than re-use as makeup water for hydraulic fracturing fluids to be used in other wells may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(c) Quarterly reporting. A permit issued under this division shall include provisions for filing quarterly reports documenting the fluid volumes into and out of the system in a form and manner prescribed by the Director.

§4.276. Minimum Permit Provisions for Closure.

(a) Notifications.

(1) The operator shall notify the Commission within 60 days after the cessation of operations.

(2) The operator shall notify the Commission 45 days before the commencement of closure activities.

(b) Time requirements for closure.

(1) Once the operations have ceased, the operator shall complete closure of the facility within one year.

(2) The Commission may grant an extension to close the facility not to exceed one additional year, provided all fluid has been removed and the operator attests to its plans for future operation.

(3) If the operator intends to use the pit for a purpose other than recycling, then the operator shall have that use approved or permitted by the Commission in accordance with the appropriate rules.

(c) Fluid and waste removal.

(1) The operator shall remove all fluids from the treatment equipment and tanks within 60 days of the date the operations cease. The contents of all tanks, vessels, or other containers shall be disposed of in an authorized manner. All equipment shall be removed and salvaged, if possible, or disposed of in an authorized manner.

(2) The operator shall remove all fluids from pits within six months of the date operations cease.

(3) All wastes, including the pit liners, shall be removed and disposed of in an authorized manner.

(4) Any concrete areas and access roads shall be cleaned and demolished, and the concrete rubble and wash water shall be disposed of in an authorized manner.

(5) All visibly contaminated soils shall be excavated and removed. The contaminated soil shall be disposed of in an authorized manner.

(d) Confirmation sampling and analysis.

(1) After the removal of wastes and visibly contaminated soils, grab samples shall be collected from around and underneath each pit, processing area, and waste storage, and the samples shall be analyzed for the parameters listed in Figure 1. The Commission may require samples from areas underneath concrete.
Figure: 16 TAC §4.276(d)(1)

(2) The minimum number of grab samples required is as follows:

(A) for pits, five samples per acre of surface area, with a minimum of four samples; and

(B) for areas containing treatment equipment and storage tanks, five samples per acre of surface area.

(3) Any soil sample that exceeds the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit is considered waste and shall be disposed of at an authorized disposal facility.

(4) If any soil samples exceed the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit, the operator shall prepare and submit a plan for confirmation, delineation, and remediation, if necessary.

(e) The facility shall be restored to a safe and stable condition that blends with the surrounding land. Topsoil and subsoils shall be replaced and contoured so as to achieve erosion control, long-term stability, and preservation of surface water flow patterns at locations where any surface water entered or exited the property boundary prior to waste management or recycling activities at the facility. Final surface grading of the pits and the storage tank battery areas shall be accomplished in such a manner that water will not collect at these former locations. The site shall be re-vegetated as appropriate for the geographic region and include a planned water source to establish the re-vegetated areas.

(f) Within 60 days of closure completion, the operator shall submit a closure report, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping, or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct, and that the operator has complied with all applicable closure requirements and conditions specified in Commission rules or directives.

(g) The operator shall notify the Commission when closure and re-vegetation are complete. The Commission shall not release financial security to the operator until all post-closure activities are approved by the Commission.

(h) The Commission will inspect the site and verify compliance with closure requirements.

~~[A permit for off-lease commercial recycling fluid issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.]~~

§4.277. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. The application for renewal of an existing permit issued pursuant to this division shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.262 of this title (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), and the notice requirements of §4.270 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.263 - 4.269 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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 August 16, 2024.

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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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DIVISION 6. REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF FLUID

16 TAC §§4.278 - 4.280, 4.282 - 4.293

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.278. General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility.

(a) An application for a permit for a stationary commercial fluid recycling facility shall be filed with the Technical Permitting Section on a Commission prescribed form, and on the same day the [~~Commission's headquarters office in Austin. The~~] applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located. The Technical Permitting Section shall not administratively begin final review of an application unless the Director has determined that the application is complete in accordance with §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). [~~on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.~~]

(b) The permit application shall contain the applicant's name; organizational report number; physical office address and, if different, mailing address; facility address; telephone number; [~~and facsimile transmission (fax) number;~~] and the name of a contact person. [~~A permit for a stationary commercial recycling facility also shall contain the facility address.~~]

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the Director [~~director~~]. The Director [~~director~~] shall neither administratively approve an application nor refer an application to hearing unless the Director [~~director~~] has determined that the application is administratively complete. If the Director [~~director~~] determines that an application is incomplete, the Director [~~director~~] shall notify the applicant in writing and shall describe the specific information required to complete the application.

(1) An applicant may make no more than two supplemental filings to complete an application.

(2) After the second supplemental submission, if the application is complete, the Director shall act on the application. The Director's action on the application shall be:

(A) approval if the application meets the requirements of this division and the application has not been protested;

(B) referral to the Hearings Division if the application meets the requirements of this division and the application has been protested; or

(C) denial if the application does not meet the requirements of this division.

(3) If after the second supplemental submission the application is still incomplete, the Director shall administratively deny the application. An application that was administratively denied may be refiled with the Commission on a Commission prescribed form and shall contain all information necessary to initiate the final review by the Director.

(4) The Director shall notify the applicant in writing of the administrative decision and, in the case of an administrative denial, the applicant's right to request a hearing on the application as it stands at the time of administrative denial.

(d) The Director shall approve or deny a complete application for a permit issued under this division that does not include a request for an exception to the requirements of this division not later than the 90th day after the date the complete application was received by the Commission, unless a protest is filed with the Commission, in which case the Commission may extend the amount of time to approve or deny the application in order to allow for a public hearing on the application pursuant to Chapter 1 of this title (relating to Practice and Procedure). If the Director does not approve or deny the application before that date, the permit application is considered approved and the applicant may operate under the terms specified in the application for a period of one year.

(e) [~~(d)~~] The permit application shall contain [~~an original signature in ink, the date of signing, and~~] the following certification signed and dated by an authorized representative of the applicant: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(f) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system or by hard copy if no digital format acceptable to the Commission has been enacted. The operator or person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

§4.279. Minimum Engineering and Geologic Information.

(a) A [~~The director may require a~~] permit applicant for a stationary commercial fluid recycling facility shall include [~~to provide the Commission with~~] engineering, geological, or other information [~~which the director deems~~] necessary to:

(1) describe the subsurface geology underlying the facility to a depth of at least 100 feet, including the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) describe the subsurface hydrogeology underlying the facility to a depth of at least 100 feet, including an assessment of the presence and characteristics of permeable and impermeable strata; and

(3) evaluate the geology, hydrogeology, and proposed engineering design to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Information for engineering and geological site characterization may be obtained from available information or from a site investigation including installation of soil borings, soil and groundwater sampling, and soil and groundwater analysis. Site-specific investigation information is considered more reliable and, therefore, will have a greater effect on the permit determination.

(c) If an operator intends to establish and later rely on actual background concentrations of contaminants in environmental media, then the operator shall collect site-specific soil and groundwater samples for analysis and include these findings with the application.

(d) [~~(b)~~] Engineering and geologic work products prepared for the application [~~by the applicant~~] shall be sealed by a professional [~~registered~~] engineer or geoscientist licensed in Texas [~~geologist, respectively,~~] as required by the Texas Occupations Code, Chapters 1001 and 1002, respectively.

§4.280. Minimum Siting Information.

(a) A pit permitted under this division shall not be located:

(1) where there has been observable groundwater within 100 feet of the ground surface unless the pit design includes a geosynthetic clay liner (GCL);

(2) within a sensitive area as defined by §4.110 of this title (relating to Definitions);

(3) within 300 feet of surface water, domestic supply wells, or irrigation water wells;

(4) within 500 feet of any public water system wells or intakes.

(5) within 1,000 feet of a permanent residence, school, hospital, institution, or church in existence at the time of the initial permitting;

(6) within 500 feet of a wetland; or

(7) within a 100-year floodplain.

(b) A permit application for a stationary commercial fluid recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address, and[;] telephone number[~~; and facsimile transmission (fax) number~~] of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

(5) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in subparagraphs (A) - (K) of this paragraph and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(A) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(B) a clear outline of the proposed facility's boundaries;

(C) the location of any pipelines within 500 feet of the facility;

(D) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(E) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(F) all water wells within a one-mile radius of the facility boundary;

(G) the location of the 100-year flood plain and the source of the flood plain information;

(H) surface water bodies within the map area;

(I) the location of any major and minor aquifers within the map area;

(J) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(K) any other information requested by the Director reasonably related to the prevention of pollution.

[~~(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.~~]

(c) Factors that the Commission will consider in assessing potential risk from stationary commercial fluid recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources or sensitive areas as defined by §4.110 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for stationary commercial fluid recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

§4.282. Minimum Design and Construction Information.

(a) A pit permitted under this division shall be designed, built, and maintained as follows.

(1) The pit shall contain the material placed in the pit and prevent releases, overflow, or failure.

(2) The maximum depth from the natural surface elevation shall not exceed 22 feet.

(3) The foundation and interior slopes shall consist of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear. All interior and exterior surfaces of the pit shall be smooth drum rolled.

(4) The pit sides and berms shall have interior and exterior grades no steeper than three horizontal feet to one vertical foot (3H:1V). The top of the berm shall be wide enough to provide adequate room for inspection, maintenance, and any other structural or construction requirements.

(A) Fill for berms shall be placed and compacted in continuous lifts with a maximum loose lift thickness of 10 inches, compacted to eight inches.

(B) Berm fill shall be compacted to at least 95% of maximum dry density determined by the Standard Proctor (ASTM D698) and at moisture content within +2% to -2% of optimum moisture content as determined by a standard proctor soil test on samples from the source area. One nuclear density test shall be conducted for each 2,500 cubic yards, and the applicant shall provide compaction testing results upon completion.

(5) Both primary and secondary liners in a pit shall be geomembrane liners composed of ASTM GRI-13 compliant materials and be impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts, and acidic and alkaline solutions. Each pit shall incorporate, at a minimum, a liner system as follows:

(A) The primary liner shall be constructed with a minimum 60-mil high density polyethylene (HDPE) for any pit under this subsection permitted after July 1, 2025.

(B) A leak detection system shall be placed between the primary and secondary geomembrane liners that shall consist of 200-mil biplanar geonet or geo-composite equivalent. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the secondary geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. The leak detection system shall be designed with the capability of removing a minimum of 1,000 gallons of leachate per acre per day or an alternative action leakage rate shall be calculated.

(C) The secondary liner shall be constructed with a minimum 40-mil HDPE for any pit under this subsection permitted after July 1, 2025. If the depth to groundwater is less than 100 feet below the ground surface, the secondary liner shall include a geosynthetic clay liner.

(D) A geotextile (felt) liner shall be placed under the secondary liner and in contact with the prepared ground surface.

(6) The edges of all liners shall be anchored in the bottom of a compacted earth-filled trench that is at least 24 inches deep and shall be performed in accordance with the manufacturer's instructions.

(7) Field seams in geosynthetic material shall be performed in accordance with the manufacturer's instructions and include the following considerations:

(A) Field seams in geosynthetic material shall be minimized and oriented perpendicular to the slope of the berm, not parallel.

(B) Prior to field seaming, the operator shall overlap liners a minimum of four to six inches. The operator shall minimize the number of field seams and corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe.

(C) Qualified personnel shall perform field seam welding and testing. Documented quality assurance/quality control testing reports shall be maintained for the life of the liner.

(8) At a point of discharge into or suction from the pit, the operator shall ensure that the liner is protected from excessive hydrostatic force or mechanical damage.

(9) All piping and equipment that is in contact with the liner shall be secured to prevent liner wear and damage.

(10) There shall be no penetrations of the liner system.

(11) The pit shall be designed to prevent run-on of any non-contact stormwater, precipitation, or surface water. The pit shall be surrounded by a berm, ditch, or other diversion to prevent run-on of any non-contact stormwater, precipitation, or surface water.

(12) The pit shall be designed to operate with a minimum two feet of freeboard plus the capacity to contain the volume of precipitation from a 25-year, 24-hour rainfall event.

(b) Tanks and treatment equipment shall be located within a secondary containment system.

(c) [~~(a)~~] A permit application for a stationary commercial fluid recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(d) [~~(b)~~] A permit application for a commercial fluid recycling facility also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, pits, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be constructed, showing the bottom, sides, and berms [~~dikes~~], showing the dimensions of each;

(4) a plan to control and manage stormwater [~~storm water~~] runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect, at a minimum, stormwater [~~storm water~~] from the facility during a 25-year, 24-hour [~~maximum~~] rainfall event, and all calculations made to determine the required capacity and design; and

(5) a plan for the installation of monitoring wells at the facility.

§4.283. Minimum Operating Information.

A permit application for a stationary commercial fluid recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of oil and gas wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the treatment process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the [~~Material~~] Safety Data Sheets (SDS) for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the health, safety, and environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

§4.284, Minimum Monitoring Information.

A permit application for a stationary commercial fluid recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions and reuse requirements;

(2) a plan for monitoring groundwater based on the subsurface geology and hydrogeology, which may include the installation and sampling of [~~any~~] monitoring wells [~~at a commercial fluid recycling facility as required by the permit and this division~~]; and

(3) a plan to verify that fluid oil and gas wastes are confined to the facility pits, tanks, and processing areas, and a schedule for conducting periodic inspections, including plans to inspect pits and liner systems, equipment, processing, and other waste storage areas.

§4.285. Minimum Closure Information.

(a) A permit application for a stationary commercial fluid recycling facility shall include a closure cost estimate (CCE) sealed by a professional engineer licensed in Texas.

(1) The CCE shall show all assumptions and calculations used to develop the estimate. The following assumptions are required:

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, under which collecting pits shall be dewatered, emptied and demolished prior to backfilling; all remaining waste will be disposed of at an authorized facility; and the facility will be restored to its native state unless otherwise authorized by the permit.

(C) None of the operator's equipment or facilities that may have otherwise been available at the time of closure (e.g., disposal wells, land treatment facilities, trucks, bulldozers, and employees) are available to assist in the closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not assess a salvage value for any material or equipment at the facility.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and all former pits unless closure of an individual pit was previously approved by the Technical Permitting Section.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the property;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon the monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of monitoring.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the perimeter of all pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a site diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which is described with specificity as to location, type and amount consistent

with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on a Commission prescribed form. Once the Commission approves the closure cost and closure plan, the operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the supporting documentation shall show the depth of the excavation is limited to what can be graded to prevent storm water from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(b) [~~(a)~~] A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.292 of this title (relating to Minimum Permit Provisions for Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all pits, treatment equipment, and associated piping and other storage or waste processing equipment [~~storage areas/cells~~];

(3) remove berms and equipment; [~~dikes; and~~]

(4) contour and reseed disturbed areas with geographically appropriate vegetation including the source of water intended to establish the reseeded areas of the facility;[~~.~~]

[~~(b)~~] [~~A permit application for a stationary commercial fluid recycling facility also shall include in the closure plan information addressing how the applicant intends to:~~]

(5) [~~(1)~~] sample and analyze soil and groundwater throughout the facility; and

(6) [~~(2)~~] plug groundwater monitoring wells.

§4.286. Notice.

(a) Purpose. Applicants are encouraged to engage with their communities early in the commercial recycling facility planning process to inform the community of the plan to construct stationary commercial fluid recycling facility and allow those who may be affected by the proposed activities to express their concerns. The purpose of the notice required by this section is to inform notice recipients:

(1) that an applicant has filed a permit application with the Commission, seeking authorization to conduct an activity or operate a facility; and

(2) of the requirements for filing a protest if an affected person seeks to protest the permit application.

(b) Timing of notice. The applicant shall provide notice after staff determines that an application stationary commercial fluid recycling facility is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively). The date notice is provided begins a 30-day period in which an affected person may file a protest of the application with the Commission.

(c) Notice recipients. The applicant shall provide notice to:

(1) the surface owners of the tract on which the commercial recycling facility will be located;

(2) the surface owners of tracts located within a distance of 1/2-mile from the fence line or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information) of the facility's fence line or boundary, even if the surface owner's tract is not adjacent to the tract on which the commercial recycling facility is located;

(3) the city clerk or other appropriate city official if any part of the tract on which the commercial recycling facility will be located lies within the municipal boundaries of the city;

(4) the Commission's District Office; and

(5) any other person or class of persons that the Director determines should receive notice of an application.

(d) Method and contents of notice. Unless otherwise specified in this subchapter, the applicant shall provide direct notice to the persons specified in subsection (c) of this section as follows.

(1) The applicant shall provide notice by registered or certified mail.

(2) The notice of the permit application shall consist of a complete copy of the application and any attachments. The copy shall be of the application and attachments after staff determines the application is complete pursuant to §1.201(b) of this title but before the final review is completed.

(3) The notice shall include a letter that contains:

(A) the name of the applicant;

(B) the date of the notice;

(C) the name of the surface owners of the tract on which the proposed commercial recycling facility will be located;

(D) the location of the tract on which the proposed commercial recycling facility will be located including a legal description of the tract, latitude/longitude coordinates of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(E) the types of fluids to be recycled at the commercial recycling facility;

(F) the recycling method proposed and the proposed end-use of the recycled material;

(G) a statement that an affected person may protest the application by filing a written protest with the Commission within 30 calendar days of the date of the notice;

(H) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(I) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(J) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(K) the signature of the operator, or representative of the operator, and the date the letter was signed.

(4) If the Director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

(e) Proof of notice. After the applicant provides the notice required by this section, the applicant shall submit to the Commission proof of delivery of notice which shall consist of:

(1) a copy of the signed and dated letters required by subsection (d)(3) of this section;

(2) the registered or certified mail receipts; and

(3) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties.

(f) Notice by publication. In addition to the notice required by subsection (d) of this section, an applicant for a stationary commercial fluid recycling facility permit shall also provide notice by publication.

(g) Newspaper of general circulation. The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date staff determines that an application is complete pursuant to §1.201(b) of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively) but before the final review is completed.

(h) Contents of published notice. The published notice shall:

(1) be entitled "Notice of Application for Commercial Fluid Recycling Facility" if the proposed facility is a commercial facility;

(2) provide the date the applicant filed the application with the Commission;

(3) identify the name of the applicant;

(4) provide the location of the tract on which the proposed facility will be located including the legal description of the property, latitude/longitude coordinates of the proposed facility, county, name of the original survey and abstract number, and location and distance in relation to the nearest municipality or community;

(5) identify the owner or owners of the property on which the proposed facility will be located;

(6) identify the type of fluid waste to be managed at the facility;

(7) identify the proposed recycling method;

(8) state that affected persons may protest the application by filing a protest with the Commission within 30 calendar days of the last date of publication;

(9) include the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(10) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(i) Proof of notice. The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(1) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(2) the tear sheets for each published notice.

(j) Protest process. Any statement of protest to an application must be filed with the Commission within 30 calendar days from the date of notice or from the last date of publication if notice by publication is authorized by the Director.

(1) The Technical Permitting Section shall notify the applicant if the Commission receives an affected person's timely protest. A timely protest is a written protest date-stamped as received by the Commission within 30 calendar days of the date notice is provided or within 30 calendar days of the last date of publication, whichever is later.

(2) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(3) The Technical Permitting Section shall refer all protested applications to the Hearings Division if a timely protest is received and the applicant requests a hearing.

(4) The Commission shall provide notice of any hearing convened under this subsection to all affected persons and persons who have requested notice of the hearing.

(5) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this section, then the Technical Permitting Section shall not take action on the application until notice is provided to such person.

(6) The Commission may issue a permit if no timely protests from affected persons are received.

(k) Director review. If the Director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the Director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

~~[(a) A permit applicant for a stationary commercial fluid recycling facility shall publish notice and file proof of publication in accordance with the following requirements.]~~

~~[(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.]~~

~~[(2) The published notice shall:]~~

[(A) be entitled, "Notice of Application for Stationary Commercial Fluid Recycling Facility";]

[(B) provide the date the applicant filed the application with the Commission for the permit;]

[(C) identify the name of the applicant;]

[(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;]

[(E) identify the owner or owners of the property upon which the proposed facility will be located;]

[(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and]

[(G) provide the address to which protests may be mailed.]

[(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.]

[(b) A permit applicant for a stationary commercial fluid recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.]

[(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:]

[(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;]

[(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;]

[(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.281 of this title (relating to Minimum Real Property Information); and]

[(D) any affected person or class of persons that the director determines should receive notice of a particular application.]

[(2) Personal notice of the permit application shall consist of:]

[(A) a copy of the application;]

[(B) a statement of the date the applicant filed the application with the Commission;]

[(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;]

[(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;]

[(E) the name of the owner or owners of the property on which the facility is to be located;]

[(F) the name of the applicant;]

[(G) the type of fluid or waste to be handled at the facility; and]

[(H) the recycling method proposed and the proposed end-use of the recycled material.]

[(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.]

[(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.]

§4.287. General Permit Provisions.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall be valid for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the Director [director].

(b) A permit issued pursuant to this division shall require that, prior to operating, the facility shall comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial fluid recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the [appropriate] Commission District Office [district office] before recycling operations commence on each tract.

§4.288. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial fluid recycling facility may be issued only if the Director [director] or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety. The Director will presume that an application meeting the requirements of §4.280(a) of this title (relating to Minimum Siting Information) does not present an unreasonable risk of pollution or threat to public health or safety with regard to siting, unless extraordinary circumstances indicate otherwise.

(b) A stationary commercial fluid recycling facility permitted pursuant to this division is prohibited [and after the effective date of this division shall not be located] within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial fluid recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) distance to any surface water body, wet or dry;

(3) depth to and quality of the shallowest groundwater;

(4) distance to the nearest property line or public road;

(5) proximity to coastal natural resources, sensitive areas as defined by §4.110 [§3.91] of this title (relating to Definitions [Cleanup of Soil Contaminated by a Crude Oil Spill]), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

§4.289. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial fluid recycling facility shall contain any requirement that the Director [director] or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee, unless waived by the Technical Permitting Section under §4.289(d) of this title (relating to Minimum Permit Provisions for Operations):

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers, if required by the Technical Permitting Section; and

(2) if required by the Technical Permitting Section, submit [to the Commission's office in Austin] a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the Director [director] may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall require that the permittee notify the Commission District Office [district office] for the county in which the facility is located prior to commencement of construction, including construction of any berms [dikes], and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) An operator shall not locate material excavated during construction:

(1) within 100 feet of a continuously flowing watercourse or significant watercourse;

(2) within 200 feet from a lakebed, sinkhole, stock pond or lake (measured from the ordinary high-water mark) or any other watercourse;

(3) within 100 feet of a wetland; or

(4) within a 100-year floodplain.

(g) The following requirements apply to signage, fencing, and security.

(1) A sign shall be posted at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least three inches in height.

(2) A sign shall be posted identifying the permit number of each pit using letters and numerals at least three inches in height. The signs shall clearly state that the fluid within the pit is not potable or suitable for consumption.

(3) The facility shall maintain security to prevent unauthorized access. Security shall be maintained by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended.

(h) Any pit associated with a stationary commercial fluid recycling facility permitted pursuant to this division after July 1, 2025, shall comply with the requirements of §4.282(a) of this title (relating to Minimum Design and Construction Information).

§4.290. Minimum Permit Provisions for Operations.

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial fluid recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The operator [~~permittee~~] shall notify the Commission District Office [~~district office~~] for the county in which the facility is located prior to commencement of the trial run.

(2) The operator [~~permittee~~] shall sample and analyze the partially treated waste that results from the trial run[~~,~~] and submit to the Director [~~director~~] for review a report of the results of the trial run prior to commencing operations.

(3) The Director [~~director~~] shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The operator [~~permittee~~] shall not use the recyclable product until the Director [~~director~~] approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

(e) Oil shall not accumulate on top of the produced or treated water stored in the tanks and pits. Any oil on top of the liquids shall be skimmed off and handled in accordance with Commission rules. Any recovered oil shall be recorded and filed with the Commission on the appropriate forms or through an electronic filing system when implemented by the Commission.

§4.291. Minimum Permit Provisions for Monitoring.

(a) Operational monitoring.

(1) The operator shall inspect the pits, tanks, and processing equipment weekly. The operator shall maintain a current log of such inspections and make the log available for review by the Commission upon request.

(2) The leak detection system shall be monitored on a weekly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is smaller.

(3) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(4) If the primary liner is compromised below the fluid level in the pit, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the District Office, and repair the damage or replace the primary liner with a liner meeting the same levels of protection, at a minimum. The pit shall not be returned to service until the liner has been repaired or replaced and inspected by the District Office.

(5) If the pit's primary liner is compromised above the fluid level in the pit, the operator shall repair the damage or initiate replacement of the primary liner, with a liner meeting the same levels of protection, at a minimum, within 48 hours of discovery or seek an extension of time from the District Office.

(6) If groundwater monitoring wells are required, no waste shall be received at the facility until all permitted groundwater monitoring wells have been completed, developed, and sampled. The documentation of these activities shall be provided to the Commission within 30 days after installation of groundwater monitoring wells. Groundwater samples will be analyzed for the parameters in Figure 1. Figure: 16 TAC §4.291(a)(6)

(7) If an operator has determined the background analyte concentrations in soil and/or groundwater, those site-specific background levels shall be signed and sealed by a professional geoscientist or professional engineer licensed in Texas and, if accepted by the Director, may be included in the permit as appropriate monitoring standards.

(b) Recyclable product monitoring.

(1) [~~(a)~~] A permit [~~issued~~] for a stationary commercial fluid recycling facility pursuant to this division may [~~shall~~] include requirements the Director [~~director~~] or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the Director [~~director~~] or the Commission and included in the permit.

(2) [~~(b)~~] A permit under this division for use of the treated fluid for any purpose other than as makeup water for hydraulic fracturing fluids or other down-hole uses may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(c) Quarterly reporting. A permit issued under this division shall include provisions for filing quarterly reports documenting the fluid volumes into and out of the system in a form and manner prescribed by the Director.

§4.292. Minimum Permit Provisions for Closure.

(a) Notifications.

(1) The operator shall notify the Commission within 60 days after the cessation of operations.

(2) The operator shall notify the Commission 45 days before the commencement of closure activities.

(b) Time requirements for closure.

(1) Once the operations have ceased, the operator shall complete closure of the facility within one year.

(2) The Commission may grant an extension to close the facility not to exceed one additional year, provided all fluid has been removed and the operator attests to its plans for future operation.

(3) If the operator intends to use the pit for a purpose other than recycling, then the operator shall have that use approved or permitted by the Commission in accordance with the appropriate rules.

(c) Fluid and waste removal.

(1) The operator shall remove all fluids from the treatment equipment and tanks within 60 days of the date the operations cease. The contents of all tanks, vessels, or other containers shall be disposed of in an authorized manner. All equipment shall be removed and salvaged, if possible, or disposed of in an authorized manner.

(2) The operator shall remove all fluids from pits within six months of the date operations cease.

(3) All wastes, including the pit liners, shall be removed and disposed of in an authorized manner.

(4) Any concrete areas and access roads shall be cleaned and demolished, and the concrete rubble and wash water shall be disposed of in an authorized manner.

(5) All visibly contaminated soils shall be excavated and removed. The contaminated soil shall be disposed of in an authorized manner.

(d) Confirmation sampling and analysis.

(1) After the removal of wastes and visibly contaminated soils, grab samples shall be collected from around and underneath each pit, processing area, and waste storage, and the samples shall be analyzed for the parameters listed in Figure 1. The Commission may require samples from areas underneath concrete.
Figure: 16 TAC §4.292(d)(1)

(2) The minimum number of grab samples required is as follows:

(A) for pits, five samples per acre of surface area, with a minimum of four samples; and

(B) for areas containing treatment equipment and storage tanks, five samples per acre of surface area.

(3) Any soil sample that exceeds the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit is considered waste and shall be disposed of at an authorized disposal facility.

(4) If any soil samples exceed the parameter limitations specified in Figure 1 in this subsection or in site-specific limitations established in the permit, the operator shall prepare and submit a plan for confirmation, delineation, and remediation, if necessary.

(e) The facility shall be restored to a safe and stable condition that blends with the surrounding land. Topsoil and subsoils shall be replaced and contoured so as to achieve erosion control, long-term stability, and preservation of surface water flow patterns at locations where any surface water entered or exited the property boundary prior to waste management or recycling activities at the facility. Final surface grading of the pits and the storage tank battery areas shall be accomplished in such a manner that water will not collect at these former locations. The site shall be re-vegetated as appropriate for the geographic region and include a planned water source to establish the re-vegetated areas.

(f) Within 60 days of closure completion, the operator shall submit a closure report, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping, or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct, and that the operator has complied with all applicable closure requirements and conditions specified in Commission rules or directives.

(g) The operator shall notify the Commission when closure and re-vegetation are complete. The Commission shall not release financial security to the operator until all post-closure activities are approved by the Commission.

(h) The Commission will inspect the site and verify compliance with closure requirements.

~~[A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.]~~

§4.293. Permit Renewal.

Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit on a Commission prescribed form. An application for renewal of an existing permit issued pursuant to this division [~~or §3.8 of this title (relating to Water Protection)~~] shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.278 of this title (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), and the notice requirements of §4.286 of this title (relating to Notice). The Director [~~director~~] may require the applicant to comply with any of the requirements of §§4.279 - 4.285 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

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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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 475-1295

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DIVISION 7. BENEFICIAL USE OF DRILL CUTTINGS

16 TAC §4.301, §4.302

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0351, 85.042, 85.202, 86.042; Texas Natural Resources Code §91.101 and §91.1017; Texas Natural Resources Code §122.004; Texas Natural Resources Code §123.0015; and Texas Water Code Chapter 29.

Cross reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, 91, 122, and 123; and Texas Water Code Chapter 29.

§4.301. Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings.

(a) The Commission encourages recycling of oil and gas waste. In addition to the requirements of Divisions 3 and 4 of this subchapter (relating to Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling, and Requirements for Stationary Commercial Solid Oil and Gas Waste Recycling Facilities, respectively), operators performing activities permitted under those divisions shall comply with the requirements of this division for activities related to the treatment and recycling for beneficial use of drill cuttings.

(b) The Commission may approve a permit for the treatment and recycling for beneficial use of drill cuttings if the treated drill cuttings are used:

(1) in a legitimate commercial product for the construction of oil and gas lease pads or oil and gas lease roads;

(2) in a legitimate commercial product for the construction of county roads; or

(3) in a legitimate commercial product used as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or construction fill if the applicant can demonstrate that the product:

(A) meets the engineering and environmental standards for the proposed use; and

(B) is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without treated drill cuttings.

§4.302. Additional Permit Requirements for Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings.

(a) An applicant for a permit to treat and recycle drill cuttings for beneficial use shall show that there is a demonstrated commercial market for the treated drill cuttings. The applicant may make this showing by providing:

(1) evidence that the same product made with drill cuttings or a product that is substantially similar is commonly used in the area where the product is created;

(2) evidence of actual commitments from customers who intend to use the product made with drill cuttings, including information regarding the volume of product the customers intend to use annually; or

(3) other credible and verifiable means consistent with the rules in this chapter.

(b) An applicant for a permit to treat and recycle drill cuttings for beneficial use shall perform a trial run in accordance with the following procedure.

(1) The applicant shall notify the Commission District Office for the county in which the facility is located prior to commencement of the trial run.

(2) The applicant shall demonstrate the ability to successfully process a 1,000 cubic yard batch of drill cuttings before the facility receives or processes any additional drill cuttings.

(3) The applicant shall collect samples of the treated drill cuttings from every 200 cubic yards of the first 1,000 cubic yard batch.

(4) Samples collected shall be analyzed and shall not exceed the parameters specified in Figure 1 or Figure 2 in subsection (c) of this section, as applicable.

(5) A written report of the results from the trial run shall be submitted to the District Office and the Technical Permitting Section within 60 days of receipt of the analytical requirement in §4.258 of this title (relating to Minimum Permit Provisions for Operations). The report shall include:

(A) a summary of the trial run and description of the process;

(B) the actual volume of drill cuttings processed;

(C) the type of waste and description of the waste material;

(D) the volume and type of each stabilization material used; and

(E) copies of all chemical and geotechnical laboratory analytical reports and chain of custody sheets for the samples required in paragraph (3) of this subsection, as applicable.

(6) The applicant shall notify the District Office for the county in which the facility is located and the Technical Permitting Section at least 72 hours before processing begins. No additional drill cuttings shall be received or processed while the results of the trial run are being reviewed by the Technical Permitting Section. Any legitimate commercial product produced during the trial run shall not be used until the Technical Permitting Section has received the trial run reports and provides written confirmation that the trial run requirements have been met.

(c) In addition to the permit standards under this subchapter, beneficial uses for treated and recycled drill cuttings shall meet the following criteria.

(1) For use of treated and recycled drill cuttings in a legitimate commercial product for the construction of oil and gas lease pads, oil and gas lease roads, and county roads, the following requirements shall apply.

(A) Bench scale tests shall be performed as needed to determine optimum mixing composition. If the composition mixture changes from the treated drill cuttings produced during the trial run, the treated drill cuttings shall be analyzed for wetting and drying durability by ASTM 559-96, modified to provide samples that are compacted and molded from finished treated drill cuttings. Total weight loss after 12 cycles shall not exceed 15%.

(B) A sample of the treated drill cuttings shall be tested for the parameters listed in Figure 1 in this subsection for the trial run required by subsection (b) of this section and for every 800 cubic yard batch of treated drill cuttings produced thereafter. Each 800 cubic yard sample shall be composed of a composite of four sub-samples obtained at 200 cubic yard intervals. Each sample shall have a complete chain of custody and shall be analyzed for the parameters on Figure 1 in this subsection.

(C) Any treated drill cuttings not meeting the limitations specified in Figure 1 in this subsection shall be returned to the mixing cycle, reprocessed, and reanalyzed until the drill cuttings meet the required parameters or shall be disposed of in accordance with Commission rules.

Figure: 16 TAC §4.302(c)(1)(C)

(2) For use of treated and recycled drill cuttings as a concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or other construction fill material as specified in §4.301(b) of this chapter (relating to Activities Related to the Treatment and Recycling for Beneficial Use of Drill Cuttings) the following requirements shall apply.

(A) Bench scale tests shall be performed as needed to determine optimum mixing composition if the composition mixture changes from the treated drill cuttings produced during the trial run.

(B) A sample of the treated drill cuttings shall be tested for the parameters listed in Figure 2 in this subsection for the trial run required by subsection (b) of this section and every 800 cubic yard batch of treated drill cuttings produced thereafter. Each 800 cubic yard sample shall be composed of a composite of four sub-samples obtained at 200 cubic yard intervals. Each sample shall be analyzed for the parameters in Figure 2.

Figure: 16 TAC §4.302(c)(2)(B)

(C) Any treated drill cuttings not meeting the parameters specified in Figure 2 in this subsection shall be returned to the mixing cycle, reprocessed, and reanalyzed until the drill cuttings meet the required parameters or shall be disposed of in accordance with Commission rules.

(D) Copies of the laboratory analytical reports and chain of custody sheets demonstrating that the treated drill cuttings meet these requirements shall be submitted to the Technical Permitting Section as part of the quarterly report.

(E) Once the permit to produce the treated drill cuttings has been granted, the permittee shall submit a separate application to the Technical Permitting Section for a letter of authority authorizing the application of the product to each specific project and location. The following information shall be included in the letter of authority application:

(i) a map drawn to scale showing the location of the final disposition of the product with latitude and longitude coordinates for the site location;

(ii) a description of the purpose for the product, such as concrete bulking agent, oil and gas waste disposal pit cover or capping material, treated aggregate, closure or backfill material, berm material, or other construction fill material;

(iii) the estimated volume of product to be used at the location;

(iv) the time frame needed for the production and application of the whole volume of treated material for this project; and

(v) landowner approval for the management and final disposition of the product at the final disposition location. If the treated drill cuttings are to be used as a concrete bulking agent at a concrete production plant, written approval from a company officer from the receiving facility or corporation is sufficient.

(3) The Commission may require that use of treated drill cuttings in legitimate commercial products other than those described in paragraphs (1) and (2) of this subsection comply with criteria in addition to those specified in this section.

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

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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas proposed amendments to §§8.1, 8.101, 8.110, 8.115, 8.125, 8.201, 8.208, 8.209, and 8.210, relating to General Applicability and Standards; Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines; Gathering Pipelines; New Construction Commencement Report; Waiver Procedure; Pipeline Safety and Regulatory Program Fees; Mandatory Removal and Replacement Program; Distribution Facilities Replacements; and Reports. The Commission proposes these amendments to capture the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) latest standards, to clarify areas of the rules that staff receives regular inquires on, and to clarify how pipeline operators should report and file with Commission.

The Commission proposes amendments to §8.1(a)(1)(B) to clarify the requirements for gas production lines located in populated areas. These proposed amendments also impact current requirements under 16 TAC §3.70, relating to Pipeline Permits Required, that exempt production lines from the permitting rule. The Commission proposes amendments to §3.70 concurrently to the proposed amendments to rules in Chapter 8.

The Commission proposes an amendment in §8.1(a)(1)(D) to clarify that all offshore pipelines (both production and gathering) located in Texas waters shall follow 49 CFR 192 and 49 CFR 195.

The Commission proposes an amendment to §8.1(b) to update the minimum safety standards and to adopt by reference the Department of Transportation (DOT) pipeline safety standards found in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline. Current subsection (b) adopted the federal pipeline safety standards as of September 6, 2021. The amendment changes the date to December 9, 2024, the estimated effective date of the rule amendments, to capture the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) pipeline safety rule amendments summarized in the following paragraphs. Once the effective date is determined, the Commission will adopt this rule with a change from the proposal to indicate the final effective date.

Docket No. PHMSA-2011-0023: Amdt. Nos. 191-30 and 192-129 revises the Federal Pipeline Safety Regulations to improve the safety of onshore gas gathering pipelines effective May 16, 2022. This final rule addresses Congressional mandates, Government Accountability Office recommendations, and public input received as part of the rulemaking process. The amendments in this final rule extend reporting requirements to all gas gathering operators and apply a set of minimum safety requirements to certain gas gathering pipelines with large diameters and high operating pressures. The rule does not affect offshore gas gathering pipelines.

Following the previously discussed final rule, Docket No. PHMSA-2011-0023: Amdt. Nos. 191-31 and 192-131, effective May 16, 2022, PHMSA noted its April 1, 2022, response denying a petition for reconsideration of the final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments." This final rule also makes clarifications and two technical corrections to that rulemaking. Lastly, this final rule memorializes a limited enforcement discretion in connection with that rulemaking's amendment of the regulatory definition of "incidental gathering." The Commission will adhere to the limited stay of enforcement.

Docket No. PHMSA-2013-0255: Amdt. Nos. 192-130 and 195-105, revises the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and hazardous liquid pipelines with diameters of six inches or greater, effective October 5, 2022. In the revised regulations, PHMSA requires operators of these lines to install rupture-mitigation valves (i.e., remote-control or automatic shut-off valves) or alternative equivalent technologies, and establishes minimum performance standards for those valves' operation to prevent or mitigate the public safety and environmental consequences of pipeline ruptures. This final rule establishes requirements for rupture-mitigation valve spacing, maintenance and inspection, and risk analysis. The final rule also requires operators of gas and hazardous liquid pipelines to contact 911 emergency call centers immediately upon notification of a potential rupture and conduct post-rupture investigations and reviews. PHMSA requires that operators also incorporate lessons learned from such investigations and reviews into operators' personnel training and qualifications programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications. PHMSA promulgated these regulations in response to congressional directives following major pipeline incidents where there were significant environmental consequences or losses of human life. The revisions are intended to achieve better rupture identification, response, and mitigation of safety, greenhouse gas, and environmental justice impacts.

Following the previously discussed final rule, Docket No. PHMSA-2013-0255: Amdt. Nos. 192-134 and 195-106, effective August 1, 2023, made editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines. The final rule also codifies the results of judicial review of that final rule.

Docket No. PHMSA-2011-0023: Amdt. No. 192-132, amended the federal pipeline safety regulations in 49 CFR Part 192 to improve the safety of onshore gas transmission pipelines effective May 24, 2023. The final rule addresses several lessons learned following the Pacific Gas and Electric Company incident that occurred in San Bruno, CA, on September 9, 2010, and responds to public input received as part of the rulemaking process. The amendments in this final rule clarify certain integrity management provisions, codify a management of change process, update and bolster gas transmission pipeline corrosion control requirements, require operators to inspect pipelines following extreme weather events, strengthen integrity management assessment requirements, adjust the repair criteria for high-consequence areas, create new repair criteria for non-high consequence areas, and revise or create specific definitions related to these amendments.

Following the previously discussed final rule, Docket No. PHMSA-2011-0023: Amdt. No. 192-133, also effective May 24, 2023, made necessary technical corrections in 49 CFR Part 192 to ensure consistency within, and the intended effect of, a recently issued final rule titled "Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments."

Docket No. PHMSA-2016-0002, Amdt. Nos. 192-135, 195-107, amended 49 CFR Parts 192 and 195 regarding periodic updates of regulatory references to technical standards and miscellaneous amendments which amended the Federal pipeline safety regulations (PSRs) to incorporate by reference all or parts of more than 20 new or updated voluntary, consensus industry technical standards. This action allows pipeline operators to use current technologies, improved materials, and updated industry and management practices. Additionally, PHMSA is clarifying certain regulatory provisions and making several editorial corrections. The effective date of this final rule was June 28, 2024.

The Commission proposes amendments in §8.1(b)(3) to align the rule text with federal exemptions allowed under 49 CFR §199.2(c)(1).

The Commission proposes several amendments in §8.101. First, the amendments proposed in subsection (b) clarify which pipelines referenced in 49 CFR Part 195 are subject to subsection (b)'s requirements - pipeline facilities used in the transportation of hazardous liquids or carbon dioxide. The current rule's figure clarified which pipelines were subject to the requirements but the rule language was unclear. The Commission also proposes amendments in §8.101(b)(1)(C) and (b)(1)(F) to align state integrity rules with the federal requirements. Amendments proposed in §8.101(d) state that operators of pipelines subject to 49 CFR §192.710 shall follow the remediation requirements required by 49 CFR §192.710(f). Corresponding changes are made to a Figure in the section.

The Commission proposes amendments in §8.110 to incorporate PHMSA definitions of types of gathering lines. For gas, the amendments incorporate new terms "Type C" and "Type R"; for liquid, the amendments incorporate the designation "reporting-regulated-only" gathering lines. These proposed amendments incorporate the newer terminology consistent with federal rules.

The Commission proposes amendments to §8.115 to require operators of liquefied natural gas (LNG) facilities to report the construction of a new LNG plant or LNG facility to the Commission. This change is proposed as new paragraph (2) and the remaining paragraphs are renumbered. The Commission proposes amendments in current §8.115(a)(4), renumbered as paragraph (5), to clarify that for liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems, distribution relocation or replacement is not required to be reported to the RRC if the construction is less than three miles in length. Amendments proposed in current subsection (a)(7), renumbered as paragraph (8), exempt Type R gas gathering pipelines and the "reporting-regulated-only" liquid gathering pipelines from the construction notification requirement. Type C pipelines must still comply with this requirement. The other amendments proposed in §8.115 allow electronic filing of required forms and reports either through email or using the Commission's online application for inspections and permits, which is currently called the Pipeline Inspection Permitting System (PIPES) and is available on the Commission's website.

The Commission proposes amendments to §8.125(e) to change terminology to align with the Commission's online filing system called CASES. Applications previously referred to as "dockets" are now called "cases." In addition, amendments proposed in subsection (e) require that a notice of a waiver application include the division's email address in addition to other required contents. Similarly, amendments proposed in subsection (f) allow affected persons who have received notice of a waiver application to object to, support, or request a hearing via email.

The Commission proposes amendments to §8.201(b)(2) and (c)(1) to require payments through the Commission's online

application for inspections and permits, which is currently called the Pipeline Inspection Permitting System (PIPES).

The Commission proposes amendments in §8.208(j) to change reporting requirements. Commission staff states operators no longer need to file these reports with the Commission. Instead, they should maintain a progress report annually and provide to the Commission upon request.

The Commission proposes an amendment in §8.209(a) to clarify that 49 CFR §192.1003(b) may provide an exemption. The Commission also proposes amendments in subsection (j) to clarify how an operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may account for the investment and expense incurred to comply with the requirements of §8.209. Operators of gas distribution systems have inconsistently applied the provisions of §8.209(j)(1)(C) when recording interest on the balance of the regulatory asset account allowed by §8.209(j)(1). This amendment clarifies that the utility's cost of long-term debt based on the pre-tax cost of capital for the utility as approved by the Commission in the utility's last statement of intent rate case is the appropriate metric by which to record interest on the balance of the account.

The Commission proposes amendments in §8.210(e) to require an operator to submit the PS-95 even if there are no leaks discovered. Additional amendments add references to the Commission's online permit application.

Stephanie Weidman, Pipeline Safety Director, Oversight and Safety Division, has determined there will be no cost to the Commission as a result of the proposed amendments. Ms. Weidman has determined that for the first five years the amendments will be in effect, there will be no fiscal implications for local governments as a result of enforcing the amendments.

Ms. Weidman has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be consistency with federal requirements.

Ms. Weidman has determined that for each year of the first five years that the amendments will be in effect, there will be no additional economic costs for persons required to comply as a result of Commission adoption of the proposed amendments. Persons required to comply with the PHMSA requirements must do so regardless of whether the requirements are adopted in Commission rules. Therefore, the proposed amendments to Commission rules do not create economic costs for persons required to comply.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed amendments. As discussed above, there will be no additional economic costs for persons required to comply as a result of adoption of the proposed amendments; therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis required under §2006.002.

The Commission has determined that the proposed rulemaking will not affect a local economy; therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a local employment impact statement for the proposed rules.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rule would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy. As noted above, the individuals required to comply with the proposed amendments are subject to the requirements, which are PHMSA's standards, even if those requirements are not adopted in Commission rules.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m., on Monday, September 30, 2024. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Weidman at (512) 463-2519. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and

practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §§60101, et seq.; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore [~~pipeline and gathering and~~] production pipelines and production facilities, in Class 2, 3, or 4 locations as defined by 49 CFR §192.5, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. These [~~The gathering and~~] production pipelines and production facilities [~~beyond this first point of measurement~~] shall be subject to 49 CFR §192.8(c) in determining if these pipelines and facilities are Type A, Type B, or Type C, and subject to the rules in 49 CFR §192.9 for Type A, Type B, or Type C pipelines [~~§192.8 and shall be subject to the rules as defined as Type A or Type B gathering lines as those Class 2, 3, or 4 areas as defined by 49 CFR §192.5~~];

(C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §§60101, et seq.; and Texas Natural Resources Code, §117.011 and §117.012; and

(D) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well. These facilities shall be subject to 49 CFR Part 192 for natural gas pipelines and 49 CFR Part 195 for hazardous liquid pipelines.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §§717, et seq.; or 49 U.S.C. §§60101, et seq.

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective December 9, 2024 [~~September 13, 2021~~].

(1) Natural gas pipelines, including LPG distribution systems and master metered systems, shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards.

(2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §§60101, et seq.; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

(3) All operators of pipelines and/or pipeline facilities, except operators that only operate one or more master meter systems, as defined in 49 CFR §191.3, shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities regulated by this chapter, other than master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §§60101, et seq.; the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Retention of DOT filings. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall retain a copy of that document or information. Such person is not required to concurrently file that document or information with the Division unless another rule in this chapter requires the document or information to be filed with the Division or unless the Division requests a copy.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice to refiling an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

(1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the

applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

(2) An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B) of this section shall comply with the applicable requirements of this section no later than the stated date:

(A) for cathodic protection (49 CFR Part 192), March 1, 2012;

(B) for damage prevention (49 CFR 192.614), September 1, 2010;

(C) to establish an MAOP (49 CFR 192.619), March 1, 2010;

(D) for line markers (49 CFR 192.707), March 1, 2011;

(E) for public education and liaison (49 CFR 192.616), March 1, 2011; and

(F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)), March 1, 2011.

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 August 15, 2024.

TRD-202403734
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 475-1295

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SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.110, 8.115, 8.125

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

(a) This section does not apply to plastic pipelines.

(b) By February 1, 2002, operators of intrastate transmission lines subject to the requirements of 49 CFR Part 192 or pipeline facilities used in the transportation of hazardous liquids or carbon dioxide subject to 49 CFR Part 195 shall have designated on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection. Hazardous liquid pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection. Natural gas pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by December 17, 2007, and the remainder by December 17, 2012; operators using the prescriptive plan shall complete the initial integrity testing by December 17, 2007, or December 17, 2012, pursuant to the requirements of paragraph (2) of this subsection.

(1) The risk-based plan shall contain at a minimum:

(A) identification of the pipelines and pipeline segments or sections in each system covered by the plan;

(B) a priority ranking for performing the integrity assessment of pipeline segments of each system based on an analysis of risks that takes into account:

(i) population density;

(ii) immediate response area designation, which, at a minimum, means the identification of significant threats to the environment (including but not limited to air, land, and water) or to the public health or safety of the immediate response area;

(iii) pipeline configuration;

(iv) prior in-line inspection data or reports;

(v) prior pressure test data or reports;

(vi) leak and incident data or reports;

(vii) operating characteristics such as established maximum allowable operating pressures (MAOP) for gas pipelines or maximum operating pressures (MOP) for liquids pipelines, leak survey results, cathodic protection surveys, and product carried;

(viii) construction records, including at a minimum but not limited to the age of the pipe and the operating history;

(ix) pipeline specifications; and

(x) any other data that may assist in the assessment of the integrity of pipeline segments; [.]

(C) assessment of pipeline integrity using at least one of the following methods appropriate for each segment:

(i) in-line inspection;

(ii) pressure test;

(iii) direct assessment; [~~or~~]

(iv) for gas pipelines only, guided wave ultrasonic testing (GWUT);

(v) for gas pipelines only, excavation with direct in situ examination; or

(vi) [~~(iv)~~] other technology or assessment methodology not specifically listed in this paragraph after approval by the director. [~~;~~]

(D) management methods for the pipeline segments which may include remedial action or increased inspections as necessary; [~~and~~]

(E) periodic review of the pipeline integrity assessment and management plan every 36 months, or more frequently if necessary; and [~~.~~]

(F) re-assessment intervals not to exceed the following:

(i) for pipelines subject to 49 CFR Part 195, a maximum interval of 10 years for onshore line pipe that can accommodate inspection by means of in-line inspection tools; or

(ii) for pipelines subject to 49 CFR Part §192.710, a maximum interval of 10 years.

(2) Operators electing not to use the risk-based plan in paragraph (1) of this subsection shall conduct a pressure test or an in-line inspection and take remedial action in accordance with the following schedule:
Figure 1: 16 TAC §8.101(b)(2) (No change.)
Figure 2: 16 TAC §8.101(b)(2)
~~Figure 2: 16 TAC §8.101(b)(2)~~

(c) Within 185 days after receipt of notice that an operator's plan is complete, the Commission shall either notify the operator of the acceptance of the plan or shall complete an evaluation of the plan to determine compliance with this section.

(d) After the completion of the assessment required under either plan, the operator shall promptly remove defects that are immediate hazards and, no later than the next test interval, shall mitigate any anomalies identified by the test that could reasonably be predicted to become hazardous defects. For pipelines subject to 49 CFR §192.710, an operator shall follow the remediation requirements required by 49 CFR §192.710(f).

(e) If a pipeline that is not subject to this section undergoes any change in circumstances that results in the pipeline becoming subject to this section, then the operator of such pipeline shall establish integrity of the pipeline pursuant to the requirements of this section prior to any further operation. Such changes include but are not limited to an addition to the pipeline, change in the operating pressure of the pipeline, change from inactive to active status, change in population in the area of the pipeline, or change of operator of the pipeline segment. If a pipeline segment is acquired by a new operator, the pipeline segment can continue to be operated without establishing pipeline integrity as long as the new operator utilizes the prior operator's operation and maintenance procedures for this pipeline segment. If the population in the area of a pipeline segment changes, the pipeline segment can continue to operate without establishing pipeline integrity until such time as the operator determines whether or not the change in population affects the criteria applicable to the integrity management program, but for no longer than the time frames established under 49 CFR Part 192 or 195.

§8.110. Gathering Pipelines.

(a) Scope. This section applies to the following gathering pipelines:

(1) Type C natural gas gathering pipelines as defined under 49 CFR §192.8 [~~located in a Class 1 location not regulated by 49 CFR §192.8 or §8.1 of this title (relating to General Applicability and Standards)~~]; [~~and~~]

(2) Type R natural gas gathering pipelines as defined under 49 CFR §192.8; and

(3) [~~(2)~~] hazardous liquids and carbon dioxide gathering pipelines as defined under 49 CFR §195.15 [~~located in a rural area as defined by 49 CFR §195.2 and not regulated by 49 CFR §195.1, 49 CFR §195.11, or §8.1 of this title~~].

(b) Safety. Each operator of a gathering pipeline described in subsection (a) of this section shall take appropriate action using processes and technologies that are technically feasible, reasonable, and practicable to correct a hazardous condition that creates a risk to public safety.

(c) Reporting.

(1) Each operator of a gas gathering pipeline described in subsection (a) of this section shall comply with §8.210(a) of this title (relating to Reports).

(2) Each operator of a hazardous liquids pipeline described in subsection (a) of this section shall comply with §8.301(a)(1)(B) and (a)(2)(B) of this title (relating to Required Records and Reporting) except that the initial telephonic report is not required.

(d) Investigation.

(1) Each operator of a gathering pipeline described in subsection (a) of this section shall conduct its own investigation and cooperate with the Commission and its authorized representatives in the investigation of any of the following:

(A) an accident as defined by 49 CFR §195.50;

(B) an incident as defined by 49 CFR §191.3;

(C) a threat to public safety; or

(D) a complaint related to operational safety.

(2) Each operator shall provide the Commission reasonable access to the operator's facilities, provide the Commission any records related to such facilities, and file such reports or other information necessary to determine whether there is a threat to the continuing safe operation of the pipeline.

(e) Corrective action and prevention of recurrence. As a result of the investigations authorized under subsection (d) of this section, the Commission may require the operator to submit a corrective action plan to the Commission to remediate an accident, incident, or other hazardous condition that creates a risk to public safety, or to address a complaint related to public safety. Upon the Commission's review and approval of the corrective action plan, the operator shall complete the corrective action. No provision of this rule prevents the operator from implementing any corrective action at any time the operator deems necessary or prudent to correct or prevent a threat to the safe operation of the gathering pipeline and pipeline facilities.

§8.115. New Construction Commencement Report.

(a) An operator shall notify the Commission before the construction of pipelines and other facilities as follows.

(1) For construction of a new, relocated, or replacement pipeline 10 miles in length or longer including liquified petroleum gas distribution systems, natural gas distribution systems, and master meter systems 10 miles in length or longer, an operator shall notify the Commission not later than 60 days before construction.

(2) For construction of a new LNG plant or LNG facility, an operator shall notify the Commission not later than 60 days before construction.

(3) [~~(2)~~] Except as provided in paragraphs [~~(4) and~~] (5) and (6) of this subsection, for construction of a new, relocated, or replacement pipeline at least one mile in length but less than 10 miles, an operator shall notify the Commission not later than 30 days before construction.

(4) [~~(3)~~] For installation of any permanent breakout tank, an operator shall notify the Commission not later than 30 days before installation. For installation of mobile, temporary, or prefabricated breakout tanks, an operator shall notify the Commission upon placing the mobile, temporary, or prefabricated breakout tank in service.

(5) [~~(4)~~] For liquefied petroleum gas distribution systems, natural gas distribution systems, or master meter systems, no construction notification is required for new, relocated or replacement construction [~~on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems~~] less than three miles in length[~~, no construction notification is required~~]. For new, relocated, or replacement construction [~~on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems~~] at least three miles in length but less than 10 miles in length, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 for every relocated or replacement construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date. These monthly reports shall be filed by email to PS-48Reports@rrc.texas.gov.

(6) [~~(5)~~] For the construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than 10 miles in length in a new subdivision or that results in a new distribution system ID, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 New Construction Report [~~Form PS-48~~] for every initial construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date.

(7) [~~(6)~~] For construction of a sour gas pipeline and/or pipeline facilities, as defined in §3.106 of this title (relating to Sour Gas Pipeline Facility Construction Permit), an operator shall notify the Commission not later than 30 days before construction by filing Form PS-48 and Form PS-79.

(8) [~~(7)~~] Pipelines subject to §8.110(a)(2) and (3) [~~§8.110~~] of this title (relating to Gathering Pipelines) are exempt from the construction notification requirement.

(b) Any of the notifications required by subsection (a) of this section, unless an operator elects to use the alternative notification allowed by subsection (a)(5) or (a)(6) [~~(a)(4)~~] of this section, shall be made by filing a Form PS-48 New Construction Report using the Commission's online application available on the Commission's website. The report shall include [~~with the Commission Form PS-48 stating~~] the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. If a notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. A Form PS-48 that has been filed with the Commission shall expire if construction is not commenced within eight months of date the report is filed. An operator may submit one extension, which will keep the report active for an additional six months. After one extension, the Form PS-48 will expire.

§8.125. Waiver Procedure.

(a) Purpose and scope. The Commission considers waiver applications to be properly based on a technical inability to comply with the pipeline safety standards set forth in this chapter, related to the specific configuration, location, operating limitations, or available technology for a particular pipeline. Generally, an application for waiver of a pipeline safety rule is site-specific. Cost is generally not a proper objection to compliance by the operator with the pipeline safety standards set forth in this chapter, and a waiver filed simply to avoid the expense of safety compliance is generally not appropriate. An operator shall request a waiver prior to performing any activities that would fall under the waiver.

(b) Filing. Any person may apply for a waiver of a pipeline safety rule or regulation by filing an application for waiver with the Division. Upon the filing of an application for waiver of a pipeline safety rule, the Division shall assign a docket number to the application and shall forward it to the director, and thereafter all documents relating to that application shall include the assigned docket number. An application for a waiver is not an acceptable response to a notice of an alleged violation of a pipeline safety rule. The Division shall not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule.

(c) Form. The application shall be typewritten on paper not to exceed 8 1/2 inches by 11 inches and shall have margins of at least one inch. The contents of the application shall appear on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced. Exhibits attached to an application shall be the same size as the application or folded to that size.

(d) Content. The application shall contain the following:

(1) the name, business address, and telephone number, and facsimile transmission number and electronic mail address, if available, of the applicant and of the applicant's authorized representative, if any;

(2) a description of the particular operation for which the waiver is sought;

(3) a statement concerning the regulation from which the waiver is sought and the reason for the exception;

(4) a description of the facility at which the operation is conducted, including, if necessary, design and operation specifications, monitoring and control devices, maps, calculations, and test results;

(5) a description of the acreage and/or address upon which the facility and/or operation that is the subject of the waiver request is located. The description shall:

(A) include a plat drawing;

(B) identify the site sufficiently to permit determination of property boundaries;

(C) identify environmental surroundings;

(D) identify placement of buildings and areas intended for human occupancy that could be endangered by a failure or malfunction of the facility or operation;

(E) state the ownership of the real property of the site; and

(F) state under what legal authority the applicant, if not the owner of the real property, is permitted occupancy;

(6) an identification of any increased risks the particular operation would create if the waiver were granted, and the additional safety measures that are proposed to compensate for those risks;

(7) a statement of the reason the particular operation, if the waiver were granted, would not be inconsistent with pipeline safety.

(8) an original signature, in ink, by the applicant or the applicant's authorized representative, if any; and

(9) a list of the names, addresses, and telephone numbers of all affected persons, as defined in §8.5 of this title (relating to Definitions).

(e) Notice.

(1) The applicant shall send a notice [~~copy of the application and a notice of protest form published by the Commission~~] by certified mail, return receipt requested, to all affected persons on the same date of filing the application with the Division. The applicant shall file all return receipts with the Division as proof of notice. The notice shall include:

(A) a copy of the application;

(B) a description of [~~describe~~] the nature of the waiver sought;

(C) a statement [~~shall state~~] that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; [~~and~~]

(D) [~~shall include~~] the case [~~docket~~] number of the application;[~~, and~~]

(E) the mailing address of the Division; and

(F) the Division's email address safety@rrc.texas.gov. [~~The applicant shall file all return receipts with the Division as proof of notice~~].

(2) The applicant shall publish notice of its application for waiver of a pipeline safety rule once a week for two consecutive weeks in the state or local news section of a newspaper of general circulation in the county or counties in which the facility or operation for which the requested waiver is located. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include the case [~~docket~~] number of the application and the mailing address of the Division. Within ten calendar days of the date of last publication, the applicant shall file with the Division a publisher's affidavit from each newspaper in which notice was published as proof of publication of notice. The affidavit shall state the dates on which the notice was published and shall have attached to it the tear sheets from each edition of the newspaper in which the notice was published.

(3) The applicant shall give any other notice of the application which the director may require.

(f) Protest or support of waiver application.

(1) Affected persons shall have standing to object to, support, or request a hearing on an application.

(2) A person who objects to, who supports, or who requests a hearing on the application shall file a written objection, statement of support, or request for a hearing with the Division no later than the 30th calendar day after the date the notice of the application was postmarked or the last date the notice was published in the newspaper in the county in which the person owns or occupies property, whichever is later.

(3) The objection, statement of support, or request for a hearing shall:

(A) state the name, address, and telephone number of the person filing the objection, statement of support, or request for hearing and of every person on whose behalf the objection, statement of support, or request for a hearing is being filed;

(B) include a statement of the facts on which the person filing the protest or statement of support relies to conclude that each person on whose behalf the objection, statement of support, or request for a hearing is being filed is an affected person, as defined in §8.5 of this title; [~~and~~]

(C) include a statement of the nature and basis for the objection to or statement of support for the waiver request; and

(D) be filed with the Commission by email to safety@rrc.texas.gov.

(g) Division review.

(1) The director shall complete the review of the application within 60 calendar days after the application is complete. If an application remains incomplete 12 months after the date the application was filed, such application shall expire and the director shall dismiss without prejudice to refiling.

(A) If the director does not receive any objections or requests for a hearing from any affected person, the director may recommend in writing that the Commission grant the waiver if granting the waiver is not inconsistent with pipeline safety. The director shall forward the file, along with the written recommendation that the waiver be granted, to the Hearings Division for the preparation of an order.

(B) The director shall not recommend that the Commission grant the waiver if the application was filed to correct an existing violation, to avoid the expense of safety compliance, or filed after the applicant already engaged in activities covered by the proposed waiver. The director shall dismiss with prejudice to refiling an application filed in response to a notice of violation of a pipeline safety rule.

(C) If the director declines to recommend that the Commission grant the waiver, the director shall notify the applicant in writing of the recommendation and the reason for it, and shall inform the applicant of any specific deficiencies in the application.

(2) If the director declines to recommend that the Commission grant the waiver, and if the application was not filed either to correct an existing violation or solely to avoid the expense of safety compliance, the applicant may either:

(A) modify the application to correct the deficiencies and resubmit the application; or

(B) file a written request for a hearing on the matter within ten calendar days of receiving notice of the assistant director's

written decision not to recommend that the Commission grant the application.

(h) Hearings and orders.

(1) Within three days of receiving either a timely-filed objection or a request for a hearing, the director shall forward the file to the Hearings Division, which shall set and conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

(2) After a hearing, the Commission may grant a waiver of a pipeline safety rule based on a finding or findings in the order that the grant of the waiver is not inconsistent with pipeline safety.

(i) Notice to United States Department of Transportation. Upon a Commission order granting a waiver of a pipeline safety rule, the director shall give written notice to the Secretary of Transportation pursuant to the provisions of 49 United States Code Annotated, §60118(d). The Commission's grant of a waiver becomes effective in accordance with the provisions of 49 United States Code Annotated, §60118(d).

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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Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER C. REQUIREMENTS FOR GAS PIPELINES ONLY

16 TAC §§8.201, 8.208 - 8.210

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.201. Pipeline Safety and Regulatory Program Fees.

(a) Application of fees. Pursuant to Texas Utilities Code, §121.211, the Commission establishes a pipeline safety and regulatory program fee, to be assessed annually against operators of natural gas distribution pipelines and pipeline facilities and natural gas master metered pipelines and pipeline facilities subject to the Commission's jurisdiction under Texas Utilities Code, Title 3. The total amount of revenue estimated to be collected under this section does not exceed the amount the Commission estimates to be necessary to recover the costs of administering the pipeline safety and regulatory programs under Texas Utilities Code, Title 3, excluding costs that are fully funded by federal sources for any fiscal year.

(b) Natural gas distribution systems. The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety and regulatory program fee of $1.00 for each service (service line) in service at the end of each calendar year as reported by each system operator on the U.S. Department of Transportation (DOT) Gas Distribution Annual Report, Form PHMSA F7100.1-1 due on March 15 of each year.

(1) Each operator of a natural gas distribution system shall calculate the annual pipeline safety and regulatory program total to be paid to the Commission by multiplying the $1.00 fee by the number of services listed in Part B, Section 3, of Form PHMSA F7100.1-1, due on March 15 of each year.

(2) Each operator of a natural gas distribution system shall remit to the Commission on March 15 of each year the amount calculated under paragraph (1) of this subsection. Payments shall be made using the Commission's online application available on the Commission's website.

(3) Each operator of a natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

(A) shall be a flat rate, one-time surcharge;

(B) shall not be billed before the operator remits the pipeline safety and regulatory program fee to the Commission;

(C) shall be applied in the billing cycle or cycles immediately following the date on which the operator paid the Commission;

(D) shall not exceed $1.00 per service or service line; and

(E) shall not be billed to a state agency, as that term is defined in Texas Utilities Code, §101.003.

(4) No later than 90 days after the last billing cycle in which the pipeline safety and regulatory program fee surcharge is billed to customers, each operator of a natural gas distribution system shall file with the Commission's Oversight and Safety Division a report showing:

(A) the pipeline safety and regulatory program fee amount paid to the Commission;

(B) the unit rate and total amount of the surcharge billed to each customer;

(C) the date or dates on which the surcharge was billed to customers; and

(D) the total amount collected from customers from the surcharge.

(5) Each operator of a natural gas distribution system that is a utility subject to the jurisdiction of the Commission pursuant to Texas Utilities Code, Chapters 101 - 105, shall file a generally applicable tariff for its surcharge in conformance with the requirements of §7.315 of this title (relating to Filing of Tariffs).

(6) Amounts recovered from customers under this subsection by an investor-owned natural gas distribution system or a cooperatively owned natural gas distribution system shall not be included in the revenue or gross receipts of the system for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122, nor shall such amounts be subject to a sales and use tax imposed by Chapter 151, Tax Code, or Subtitle C, Title 3, Tax Code.

(c) Natural gas master meter systems. The Commission hereby assesses each natural gas master meter system an annual pipeline safety and regulatory program fee of $100 per master meter system.

(1) Each operator of a natural gas master meter system shall remit to the Commission the annual pipeline safety and regulatory program fee of $100 per master meter system no later than June 30 of each year. Payments shall be made using the Commission's online application available on the Commission's website.

(2) The Commission shall send an invoice to each affected natural gas master meter system operator no later than April 30 of each year as a courtesy reminder. The failure of a natural gas master meter system operator to receive an invoice shall not exempt the natural gas master meter system operator from its obligation to remit to the Commission the annual pipeline safety and regulatory program fee on June 30 each year.

(3) Each operator of a natural gas master meter system shall recover as a surcharge to its existing rates the amounts paid to the Commission under paragraph (1) of this subsection.

(4) No later than 90 days after the last billing cycle in which the pipeline safety and regulatory program fee surcharge is billed to customers, each natural gas master meter system operator shall file with the Oversight and Safety Division a report showing:

(A) the pipeline safety and regulatory program fee amount paid to the Commission;

(B) the unit rate and total amount of the surcharge billed to each customer;

(C) the date or dates on which the surcharge was billed to customers; and

(D) the total amount collected from customers from the surcharge.

(d) Late payment penalty. If the operator of a natural gas distribution system or a natural gas master meter system does not remit payment of the annual pipeline safety and regulatory program fee to the Commission within 30 days of the due date, the Commission shall assess a late payment penalty of 10 percent of the total assessment due under subsection (b) or (c) of this section, as applicable, and shall notify the operator of the total amount due to the Commission.

§8.208. Mandatory Removal and Replacement Program.

(a) Effective September 1, 2008, this section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192.

(b) For leaks identified on any underground compression coupling used to mechanically join steel pipe, each operator shall either replace the leaking compression coupling or repair it using a sleeve welded over the compression coupling.

(c) Each operator shall repair or replace any compression coupling used to mechanically join steel pipe that is exposed during operation and maintenance activities unless the operator can determine the coupling was installed after 1980.

(d) For leaks identified on any underground compression coupling used to mechanically join plastic pipe, each operator shall remove and/or replace the leaking compression coupling.

(e) For any other compression coupling used to join plastic pipe that is exposed during operation and maintenance activities, each operator shall:

(1) For plastic pipe two inches or less in diameter, replace or remove such coupling unless the operator can determine that the coupling is designated as an ASTM (American Society for Testing and Materials) D2513 Category 1 type fitting.

(2) For plastic pipe greater than two inches in diameter, replace or remove such coupling unless the operator can determine that the coupling is designated as an ASTM D2513 Category 1 or Category 3 type fitting.

(f) Each operator shall remove and replace all compression couplings at currently known service riser installations, identifiable by a meter number or a street address, if they are not manufactured and installed in accordance with ASTM D2513 for Category 1 fittings.

(g) Each operator shall complete the removal and replacement of such compression couplings by November 30, 2009.

(h) Any coupling installed on plastic pipe after September 1, 2008, shall be designed to meet the requirements of ASTM D2513 Category 1.

(i) Any coupling installed on steel pipe after September 1, 2008, shall be designed to meet the requirements of 49 CFR Part 192, §192.273.

(j) Beginning January 15, 2025, and annually [~~November 1, 2008, and every six months~~] thereafter until all compression couplings on the operator's system subject to subsection (f) of this section have been removed and replaced, each operator shall maintain [~~file with the division~~] a progress report showing the number of service riser installations checked, the condition of the coupling, and the total number of compression couplings replaced for the prior calendar year [~~that reporting period~~]. Each operator shall retain this progress report and shall provide a copy of the report to the Commission upon request.

§8.209. Distribution Facilities Replacements.

(a) Unless exempted by 49 CFR §192.1003(b), this [~~This~~] section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. This section prescribes the minimum requirements by which all operators will develop and implement a risk-based program for the removal or replacement of distribution facilities, including steel service lines, in such gas distribution systems. The risk-based program will work in conjunction with the Distribution Integrity Management Program (DIMP) using scheduled replacements to manage identified risks associated with the integrity of distribution facilities.

(b) Each operator must make joints on below-ground piping that meets the following requirements:

(1) Joints on steel pipe must be welded or designed and installed to resist longitudinal pullout or thrust forces per 49 CFR §192.273.

(2) Joints on plastic pipe must be fused or designed and installed to resist longitudinal pullout or thrust forces per ASTM D2513-Category 1.

(c) Each operator must establish written procedures for implementing the requirements of this section. Each operator must develop a risk-based program to determine the relative risks and their associated consequences within each pipeline system or segment. Each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis set forth in subsection (d) of this section and use the prescriptive model in subsection (f) of this section for the replacement of those steel service lines.

(d) In developing its risk-based program, each operator must develop a risk analysis using data collected under its DIMP and the data submitted on the PS-95 to determine the risks associated with each of the operator's distribution systems and establish its own risk ranking for pipeline segments and facilities to determine a prioritized schedule for service line or facility replacement. The operator must support the analysis with data, collected to validate system integrity, that allow for the identification of segments or facilities within the system that have the highest relative risk ranking or consequence in the event of a failure. The operator must identify in its risk-based program the distribution piping, by segment, that poses the greatest risk to the operation of the system. In addition, each operator that determines that steel service lines are the greatest risk must conduct a steel service line leak repair analysis to determine the leak repair rate for steel service lines. The leak repair rate for below-ground steel service lines is determined by dividing the annualized number of below-ground leaks repaired on steel service lines (excluding third-party leaks and leaks on steel service lines removed or replaced under this section) by the total number of steel service lines as reported on PHMSA Form F 7100.1-1, the Gas Distribution System Annual Report. Each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis using the most recent three calendar years of data reported to the Commission on Form PS-95.

(e) Each operator must create a risk model that will identify by segment those lines that pose the highest risk ranking or consequence of failure. The determination of risk is based on the degree of hazard associated with the risk factors assigned to the pipeline segments or facilities within each of the operator's distribution systems. The priority of service line or facility replacement is determined by classifying each pipeline segment or facility based on its degree of hazard associated with each risk factor. Each operator must establish its own risk ranking for pipeline segments or facilities to determine the priority for necessary service line or facility replacements. Each operator should include the following factors in developing its risk analysis:

(1) pipe location, including proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;

(2) composition and nature of the piping system, including the age of the pipe, materials, type of facilities, operating pressures, leak history records, prior leak grade repairs, and other studies;

(3) corrosion history of the pipeline, including known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;

(4) environmental factors that affect gas migration, including conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.); particular soil conditions; unstable soil; or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and

(5) any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, including construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

(f) This subsection applies to operators that determine under subsection (c) of this section that steel service lines are the greatest risk. Based on the results of the steel service line leak repair analysis under subsection (d) of this section, each operator must categorize each segment and complete the removal and replacement of steel service lines by segment according to the risk ranking established pursuant to subsection (e) of this section as follows:

(1) a segment with an annualized steel service line leak rate of 5% or greater but less than 7.5% is a Priority 1 segment and an operator must remove or replace no less than 10% of the original inventory per year; and

(2) a segment with an annualized steel service line leak rate of less than 5% is a Priority 2 segment. An operator is not required to remove or replace any Priority 2 segments; however, upon discovery of a leak on a Priority 2 segment, the operator must remove or replace rather than repair those lines except as outlined in subsection (g) of this section.

(g) For those steel service lines that must remain in service because of specific operational conditions or requirements, each operator must determine if an integrity risk exists on the segment, and if so, must replace the segment with steel as part of the integrity management plan.

(h) All replacement programs require a minimum annual replacement of 8% of the pipeline segments or facilities posing the greatest risk in the system and identified for replacement pursuant to this section. Each operator with steel service lines subject to subsection (f) of this section must establish a schedule for the replacement of steel service lines or other distribution facilities according to the risk ranking established as part of the operator's risk-based program and must submit the schedule to the Division for review and approval or amendment under subsection (c) of this section.

(i) In conjunction with the filing of the pipeline safety and regulatory program fee pursuant to §8.201 of this title (relating to Pipeline Safety and Regulatory Program Fees) and no later than March 15 of each year, each operator must file with the Division:

(1) by System ID, a list of the steel service line or other distribution facilities replaced during the prior calendar year; and

(2) the operator's proposed work plan for removal or replacement for the current calendar year, the implementation of which is subject to review and amendment by the Division. Each operator must notify the Division of any revisions to the proposed work plan and, if requested, provide justification for such revision. Within 45 days after receipt of an operator's proposed revisions to its risk-based plan and work plan, the Division will notify the operator either of the

acceptance of the risk-based program and work plan or of the necessary modifications to the risk-based program and work plan.

(j) Each operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may use the provisions of this subsection to account for the investment and expense incurred by the operator to comply with the requirements of this section.

(1) The operator may:

(A) establish one or more designated regulatory asset accounts in which to record any expenses incurred by the operator in connection with acquisition, installation, or operation (including related depreciation) of facilities that are subject to the requirements of this section;

(B) record in one or more designated plant accounts capital costs incurred by the operator for the installation of facilities that are subject to the requirements of this section;

(C) record interest on the balance in the designated distribution facility replacement accounts based on the cost of long-term debt [~~pretax cost of capital~~] last approved for the utility by the Commission. The utility's cost of long-term debt [~~pre-tax cost of capital~~] may be adjusted and applied prospectively if the Commission establishes a new cost of long-term debt [~~pre-tax cost of capital~~] for the utility in a future proceeding;

(D) reduce balances in the designated distribution facility replacement accounts by the amounts that are included in and recovered though rates established in a subsequent Statement of Intent filing or other rate adjustment mechanism; and

(E) use the presumption set forth in §7.503 of this title (relating to Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) with respect to investment and expense incurred by a gas utility for distribution facilities replacement made pursuant to this section.

(2) This subsection does not render any final determination of the reasonableness or necessity of any investment or expense.

(k) A distribution gas pipeline facility operator shall not install as a part of the operator's underground system a cast iron, wrought iron, or bare steel pipeline. A distribution gas pipeline facility operator shall replace any known cast iron pipelines installed as part of the operator's underground system not later than December 31, 2021.

§8.210. Reports.

(a) Incident report.

(1) Telephonic report. At the earliest practical moment but no later than one hour following confirmed discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from its pipelines defined as an incident in 49 CFR §191.3. The telephonic report shall be made to the Commission's 24-hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the incident;

(C) the time of the incident;

(D) the number of fatalities and/or personal injuries;

(E) the phone number of the operator;

(F) the telephone number of the operator's on-site person; and

(G) any other significant facts relevant to the incident. Ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are included as significant facts.

(2) This paragraph applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. Such operator shall also provide the following information to the Division when the information is known by the operator:

(A) the cost of gas lost;

(B) estimated property damage to the operator and others;

(C) any other significant facts relevant to the incident; and

(D) other information required under federal regulations to be provided to the Pipeline and Hazardous Materials Safety Administration or a successor agency after a pipeline incident or similar incident.

(3) Written report.

(A) Following the initial telephonic report for incidents described in paragraph (1) of this subsection, the operator shall retain its records and provide to the Commission upon request the applicable written reports submitted to the Department of Transportation. Operators of gas gathering pipelines regulated by §8.110 (relating to Gathering Pipelines) shall file with the Commission within 30 calendar days after the date of the telephonic report a written report on an incident described in paragraph (1) of this subsection utilizing the applicable form from the Department of Transportation.

(B) The written report is not required to be submitted for master metered systems.

(C) The Commission may require an operator to submit a written report for an incident not otherwise required to be reported.

(b) Pipeline safety annual reports. Each gas company shall retain the annual report for its intrastate systems in the same manner as required by 49 CFR Part 191. A gas company shall provide a copy of the annual report to the Commission upon request.

(c) Safety related condition reports. Each gas company shall submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR 191.23.

(d) Offshore pipeline condition report. Within 60 days of completion of underwater inspection, each operator shall file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a). The report shall include the information required in 49 CFR 191.27.

(e) Leak Reporting. For purposes of this subsection, the term "leak" includes all underground leaks, all hazardous above ground leaks, and all non-hazardous above ground leaks that cannot be eliminated by lubrication, adjustment, or tightening. Each operator of a gas distribution system shall submit to the Division a list of all leaks repaired on its pipeline facilities. Each such operator shall list all leaks identified on all pipeline facilities. Each such operator shall also include the number of unrepaired leaks remaining on the operator's systems by leak grade. Each such operator shall submit leak reports by July 15 and January 15 of each calendar year, in accordance with the PS-95 Semi-Annual Leak Report Electronic Filing Requirements using the Commission's online application available on the Commission's website [~~using the Commission's online reporting system, Form PS-95, by July 15 and January 15 of each calendar year, in accordance with the PS-95 Semi-Annual Leak Report Electronic Filing Requirements~~]. The report submitted on July 15 shall include

information from the previous January 1 through the previous June 30. The report submitted on January 15 shall include information from the previous July 1 through the previous December 31. All operators shall submit a PS-95 Semi Annual Leak Report every July 15 and January 15, even if there are no pending or repaired leaks during the reporting time period. The report includes:

(1) leak location;

(2) facility type;

(3) leak classification;

(4) pipe size;

(5) pipe type;

(6) leak cause; and

(7) leak repair method.

(f) The Commission shall retain state records regarding a pipeline incident perpetually. "State record" has the meaning assigned by Texas Government Code §441.180.

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 August 15, 2024.

TRD-202403736
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.50

The Public Utility Commission of Texas (commission) proposes the repeal of 16 Texas Administrative Code (TAC) §24.361, relating to Municipal Rates for Certain Recreational Vehicle Parks and proposes to replace the repeal with new §24.50, relating to Rates for Certain Recreational Vehicle Parks.

This proposed new rule will implement Texas Water Code §13.152 as added by Senate Bill 594 during the Texas 88th Regular Legislative Session. The new rule will require a retail public utility, other than a municipally owned utility (MOU), that provides water or sewer service to a recreational vehicle park to ensure that billing for the service is based on actual water usage recorded by the retail public utility. The new rule will also prohibit a retail public utility, other than an MOU, from imposing a surcharge based on the number of recreational vehicle or cabin sites in the recreational vehicle park.

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;

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

(7) the proposed rule will 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

Tammy Benter, Division Director, Division of Utility Outreach, 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

Ms. Benter 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 enhanced customer billing protections for customers of a retail public utility other than a municipally owned utility. There will not be any probable economic costs 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 September 27, 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 September 27, 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 56828.

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 section is proposed under 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 §13.087 which prescribes municipal rates for certain recreational vehicle parks; and Texas Water Code §13.152 which establishes billing requirements for recreational vehicle parks by a retail public utility other than an MOU.

Cross Reference to Statute: Texas Water Code §13.041(a) and (b), 13.087, 13.152.

§24.50. Rates for Certain Recreational Vehicle Parks.

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

(1) Nonsubmetered master metered utility service--Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) Recreational vehicle--Includes a:

(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and

(B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.

(3) Recreational vehicle park--A commercial property on which service connections are made for recreational vehicle transient guest use and for which fees are paid at intervals of one day or longer.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park must determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses, including hotels and motels, that serve transient customers and receive nonsubmetered master metered utility service from the utility.

(c) A retail public utility, other than a municipally owned utility, that provides water or sewer service to a recreational vehicle park:

(1) must ensure that billing for the service is based on actual water usage recorded by the retail public utility; and

(2) is prohibited from imposing a surcharge based on the number of recreational vehicles or cabin sites in the recreational vehicle park.

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 August 16, 2024.

TRD-202403777
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.361

Statutory Authority

The repeal is proposed under 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 §13.087 which prescribes municipal rates for certain recreational vehicle parks; and Texas Water Code §13.152 which establishes billing requirements for recreational vehicle parks by a retail public utility other than an MOU.

Cross Reference to Statute: Texas Water Code §13.041(a) and (b), 13.087, 13.152.

§24.361. Municipal Rates for Certain Recreational Vehicle Parks.

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 August 16, 2024.

TRD-202403778
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 936-7322

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.52

The Public Utility Commission of Texas (commission) proposes an amendment to 16 Texas Administrative Code (TAC) §25.52 relating to Reliability and Continuity of Service.

The amended rule will require each transmission and distribution utility to maintain an online outage tracker that provides detailed information regarding power outages. The amended rule will also require each electric utility, municipally owned utility, and electric cooperative to develop processes to receive information from appropriate state or local governmental authorities concerning the existence of potential hazardous conditions that may require the disconnection of electric service to a customer.

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 not create a new regulation;

(6) the proposed rule will expand 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

David Smeltzer, Director of Rules and Projects 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. Smeltzer 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 improved communication between state and local governmental entities and utilities regarding hazardous conditions and the timely and accurate monitoring and disclosure of power outages throughout the State of Texas. The probable economic costs required to comply with the rule will be minimal and will vary from person to person 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 September 20, 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 September 20, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 rule on adoption. All comments should refer to Project Number 56897.

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 amendment 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; §38.005, which requires the commission to implement service quality and reliability standards relating to the delivery of electricity to customers by electric utilities; and PURA §38.072, which

requires an electric utility to give nursing facilities, assisted living facilities and hospice facilities the same priority that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended outage; and §38.074, which requires the commission to, in collaboration with the Railroad Commission of Texas, rules to establish a process to designate certain natural gas facilities and entities as critical natural gas customers during energy emergencies and to require utilities to prioritize these facilities for load-shed and power restoration purposes during an energy emergency.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 38.005, 38.072, 38.074.

§25.52. Reliability and Continuity of Service.

(a) Application. This section applies to all electric utilities as defined by §25.5 [~~§25.5(41)~~] of this title (relating to Definitions) and all transmission and distribution utilities as defined by §25.5 [~~§25.5(137)~~] of this title. When specifically stated, this section also applies to electric cooperatives and municipally-owned utilities (MOUs). The term "utility" as used in this section means an electric utility and a transmission and distribution utility.

(b) General.

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

(6) Within six months of the effective date of this rule, each utility, electric cooperative, and MOU must, in consultation with commission staff, make available to state and local authorities a method to report a potential hazardous condition that may require disconnection of service. Each utility, electric cooperative, and MOU must provide notice of the reporting method and any relevant contact information to the commission, the Railroad Commission of Texas, and the State Fire Marshal upon its adoption and no later than February 1 of each calendar year.

(7) Each utility must maintain an accurate and publicly available online outage tracker on its website.

(A) An online outage tracker must contain a map of the utility's service territory that identifies, for each active outage, the location of the outage, the date and time the outage was reported or otherwise identified, an estimated restoration time, the status of the restoration effort, and the date and time the information was most recently updated. Information provided by the outage tracker under this subparagraph must be available in English and Spanish, where applicable.

(B) If a utility's outage tracker is scheduled to be taken offline or may otherwise become unavailable due to maintenance or upgrades, the utility must post details of the scheduled activity on its website and provide notice of the scheduled activity to the commission's Consumer Protection and Critical Infrastructure Security and Risk Management divisions no later than seven days prior to the scheduled activity. A utility must immediately notify the commission in writing if the utility's outage tracker unexpectedly becomes unavailable.

(C) An outage tracker must provide or link to information that indicates the different methods a customer may use to report an outage or hazardous condition and provide or link to information on how a customer may request to receive updates on the status of outages and outage restoration efforts.

(c) - (h) (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 August 16, 2024.

TRD-202403779
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE PROVIDERS

16 TAC §25.472

The Public Utility Commission of Texas (commission) propose an amendment to 16 Texas Administrative Code (TAC) §25.472, relating to Privacy of Customer Information. The proposed amendments will require retail electric providers to provide emergency contact information for retail electric customers to transmission and distribution utilities. The proposed amendments also restrict the use of this information to providing affected customers with updates on power outages, estimated restoration times, and restoration updates.

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 not create a new regulation;

(6) the proposed rule will expand 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

David Smeltzer, Director of Rules and Projects, 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. Smeltzer 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 improved communications between transmission and distribution utilities and retail electric customers regarding electric power outages and projected restoration times. The economic costs required to comply with this rule will not be significant and will vary from person to person 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 September 19, 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 September 19, 2024. Reply comments must be filed by October 3, 2024. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 rule on adoption. All comments should refer to Project Number 56898.

The commission also requests comments on the following question:

Does the proposed rule strike the appropriate balance between enabling transmission and distribution utilities to provide affected customers with information concerning power outages and protecting customers' privacy? If not, 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 amendment 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. Amended §25.472 is also proposed under §17.004 and §39.101, which direct the commission to implement customer protections for electric customers, and §39.106, which directs the commission to designate providers of last resort.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 17.004, 39.101, and 39.106.

§25.472. Privacy of Customer Information.

(a) (No change.)

(b) Individual customer and premise information.

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

(6) Emergency contact information. Notwithstanding paragraph (1) of this subsection, a REP may provide proprietary customer information to a TDU in accordance with this paragraph.

(A) Within 30 days of the effective date of this section, each REP must provide a TDU with customer contact information for each retail customer of the REP within that TDU's service territory. The information must include the retail customer's name, service address, telephone number, mobile phone number, and email address. The REP must provide this information using the standard electronic transaction fields intended for the provision and updating of customer contact information including power outage contact information.

(B) For a new customer, a REP must provide the customer contact information listed in subparagraph (A) of this paragraph to the TDU within five days of the new customer's enrollment.

(C) A REP must provide any updated customer contact information to a TDU within five days of the REP receiving the updated information.

(D) A TDU may use the information provided under this paragraph to provide affected customers with notifications of power outages, estimated restoration times, and restoration updates. A TDU is prohibited from using the information provided under this paragraph except as permitted by this subparagraph, unless otherwise authorized by statute, commission rule, commission order, or as expressly authorized in writing by the customer.

(E) Each communication made by a TDU to a customer using the information provided under this paragraph must include instructions on how the customer can opt out of future communications under this paragraph.

(F) Each notification or communication provided under this paragraph must be provided in English and Spanish.

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 August 16, 2024.

TRD-202403780
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 936-7322

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §84.2 and §84.3; Subchapter C, §§84.40, 84.43, 84.44, 84.46; Subchapter D, §84.50; Subchapter E, §84.60 and §84.63; Subchapter G, §84.80; and Subchapter N, §84.600 and §84.601; new rules at Subchapter D, §84.51 and §84.52; Subchapter M, §§84.500 - 84.505; and the repeal of existing rules at Subchapter D, §84.51 and §84.52; and Subchapter M, §§84.500 - 84.502 and §84.504 regarding the Driver Education and Traffic Safety (DES) program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 84, implement House Bill (HB) 1560, Article 5, Regular Session (2021) and Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The proposed rules are necessary to complete the Department's administrative rulemaking effort for the implementation of HB 1560, Article 5 for the DES program, which addresses rule amendments relating to: (1) driver training curriculum, driver education certificate prerequisites, and enforcement; and (2) implementing the recommendations of the DES Curriculum Workgroup (Workgroup).

House Bill 1560, Article 5, Driver Education (Phase 2)

House Bill 1560, Article 5, Regular Session (2021) represented a significant reorganization and modification in the Driver Education and Traffic Safety program, which the Department is implementing in two phases. The first phase of the DES bill implementation project included: (1) repealing specific driver training license types, program courses, endorsements, and administrative functions to promote simplicity and transparency for stakeholders; and (2) amending program fees and requirements related to the revised license types. The Department accomplished these objectives in its first rulemaking to implement the bill, through the adoption of rules that became effective June 1, 2023.

This second phase of rulemaking will address additional amendments that will impact issues such as: (1) driver education course curriculum, classroom and behind-the-wheel instruction hours, and course creation; (2) provider administration of driver education certificates after course auditing; and (3) authorizing the Commission to change minimum hours for driver education course instruction.

The Workgroup conducted three meetings in this second phase to address the proposed changes to the DES program brought about by HB 1560, Article 5. The Workgroup review was limited to 16 TAC Chapter 84, Subchapters A, C-E, G, M and N, and the proposed rules reflect their recommendations.

Advisory Board Recommendations

The proposed rules were presented to and discussed by the Driver Education and Traffic Safety Advisory Committee (Committee) at its meeting on April 25, 2024. The Advisory Board approved changes to the proposed rules at 16 TAC §§84.500, 84.502, 84.505 and 84.601. The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

Subchapter A, General Provisions.

The proposed rules amend §84.2, Definitions, by: (1) adding new definitions for "behind-the-wheel instruction", "in-car instruction", "registered agent", and "supervised practice"; and (2) renumbering the provisions as needed.

The proposed rules amend §84.3, Materials Adopted by Reference, by updating the DES Program Guides adopted by reference to their new 2024 editions, which include updates to reflect current laws, rules, and Department policies and to improve organization and clarity. The DES Program Guides will be published separately in the *Texas Register* in the "In-Addition" section of the publication with the proposed rules.

Subchapter C, Driver Education Schools and Instructors.

The proposed rules amend §84.40, Driver Education Provider Licensure Requirements, by: (1) repealing the requirement that a school provide a current list of inventoried motor vehicles used for instruction as a part of the license renewal application; and (2) correcting rule language.

The proposed rules amend §84.43, Driver Education Certificates, by: (1) adding a provision that a school's failure to update curriculum following an audit recommendation could result in the Department's suspension of the school's right to receive driver education certificates; (2) expanding suspension or revocation penalties to a school's credentials in the event of any misrepresentation made by a school or instructor in issuing a driver education certificate; and (3) clarifying rule language and grammar.

The proposed rules amend §84.44, Driver Education Instructor License, by correcting rule language.

The proposed rules amend §84.46, Attendance and Makeup, by correcting rule language.

Subchapter D, Parent-Taught Driver Education.

The proposed rules amend §84.50, Parent-Taught Driver Education Program Requirements, by (1) adding language clarifying the minimum amount of behind-the-wheel instruction and supervised practice a student must complete after receiving a learner license upon completion of Module One; and (2) repealing language requiring that behind-the-wheel parent taught driver education be conducted solely on Texas highways.

The proposed rules add new §84.51, Submission of Parent-Taught Course for Department Approval. The new rule replaces existing §84.51 to repeal the department's practice of pre-approval of course material at initial application, and course review upon renewal, consistent with HB 1560 directives.

The proposed rules add new §84.52, Revocation of Department Approval (formerly entitled "Cancellation of Department Approval"). The new rule replaces existing §84.52 to: (1) expand the Department's authority to revoke a parent-taught driver education (PTDE) provider license in the event the course material is inconsistent with applicable state law; (2) provide a 90-day window for a PTDE provider to correct any deficiencies in the course material noticed by the Department before possible revocation; (3) establish a 30-day waiting period for a PTDE

provider to reapply for a new parent-taught driver education provider license after revocation; and (4) clarified rule language.

The proposed rules repeal existing §84.51, Submission of Parent-Taught Course for Department Approval.

The proposed rules repeal existing §84.52, Cancellation of Department Approval.

Subchapter E, Providers.

The proposed rules amend §84.60, Driving Safety Provider License Requirements, by correcting rule language.

The proposed rules amend §84.63, Uniform Certificate of Course Completion for Driving Safety Course, by correcting rule language.

Subchapter G, General Business Practices.

The proposed rules amend §84.80, Names and Advertising, by correcting rule language.

Subchapter M, Curriculum and Alternative Methods of Instruction.

The proposed rules add new §84.500, Courses of Instruction for Driver Education Providers. The new rule replaces existing §84.500 to: (1) update the educational objectives of driver training courses consistent with current state law; (2) reduce the minimum of classroom instruction hours in driver education courses from 32 to 24 hours; (3) govern the administration and teaching of driver education materials to maximize student mastery of educational content; (4) clarify driver education requirements related to behind-the-wheel and in-car instruction; (5) transfer the rule requirements for in-person and online adult six-hour driver education courses to new §§84.502 and 84.503, respectively; (6) restrict students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction; (7) allow DE providers more flexibility in the presentation of driver education instruction to students, consistent with the provisions of HB 1560; and (8) reorganize subsections as needed.

The proposed rules add new §84.501, Driver Education Course Alternative Method of Instruction. The new rule replaces existing §84.501 to: (1) clarify minimum Department standards for AMI approval to ensure secure testing and security measures for content and personal validation, and integrity and consistency in presentation of driver education course curriculum with in-person and online instruction; (2) reduce the total duration of student break intervals, and the minimum hours of driver education instructional content presented in an AMI format from 32 hours to 24 hours; (3) increase the minimum amount of minutes allocated to an AMI for multimedia presentations from 640 minutes to 720 minutes; (4) simplify the academic integrity standards and instructional design concepts for an AMI driver education course; (5) add multifactor authentication requirements for personal validation of students for an AMI driver education course; (6) clarify the process by which a DE provider may modify AMI instructional methods and ensure that such changes are consistent with applicable law, rules and DE Program Guides; and (7) reorganize subsections as needed.

The proposed rules add new §84.502, In-Person Driver Education Course Exclusively for Adults. The new rule replaces existing §84.502 to: (1) move the Department rules related to the Adult In-Person Six Hour Driver Education Course from §84.500(b)(2) and place them in a separate section for greater ease in location and clarity for the public; and (2) reorganize the subsections as needed.

The proposed rules add new §84.503, Online Driver Education Course Exclusively for Adults, to: (1) move the Department rules related to the Adult Online Six Hour Driver Education Course from §84.500(b)(2)(B) and place them in a separate section for greater ease in location and clarity for the public; (2) add multifactor authentication requirements for personal validation of students for an online adult six-hour driver education course; and (3) reorganize the subsections as needed.

The proposed rules add new §84.504, Driving Safety Courses of Instruction. The new rule replaces existing §84.504 to: (1) relocate the Driving Safety rules from §84.502 to this new rule location; (2) update the educational objectives of driver training courses consistent with current state law; (3) remove authorship requirements for those providers that compose customized driving safety curriculum; (4) simplify rule language; and (5) reorganize the subsections as needed.

The proposed rules add new §84.505, Driving Safety Course Alternative Delivery Method, to: (1) relocate existing §84.504 to this new rule location; (2) add multifactor authentication requirements for personal validation of students for an ADM six-hour driving safety education course; (3) simplify rule language; and (4) reorganize the subsections as needed.

The proposed rules repeal existing §84.500, Courses of Instruction for Driver Education Schools.

The proposed rules repeal existing §84.501, Driver Education Course Alternative Method of Instruction.

The proposed rules repeal existing §84.502, Driving Safety Courses of Instruction.

The proposed rules repeal existing §84.504, Driving Safety Course Alternative Delivery Method.

Subchapter N, Program Instruction for Public Schools, Education Service Centers, and Colleges or Universities Course Requirements.

The proposed rules amend §84.600, Program of Organized Instruction, by: (1) reducing the minimum of classroom instruction hours in a driver education course from 32 to 24 hours; (2) restricting students from enrolling in a driver education course after commencement of the fifth hour (instead of the seventh hour) of classroom instruction in a 24-hour program; (3) limiting driver education training (including in-car instruction) to a maximum of six hours each day; and (4) clarifying rule language.

The proposed rules amend §84.601, Additional Procedures for Student Certification and Transfers, by reducing the record retention period for Texas schools of driver education course completion certificates from seven years to three years, or as mandated by the school district.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to

the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules become clearer and easier to understand, and aids license holders to comply with the rules more fully.

Adoption of the limited changes contained in the proposed rules by the Texas Commission of Licensing and Regulation will: (1) clarify and update the curriculum requirements to reflect the current roles and responsibilities for the driver education provider types; (2) align the standards for parent-taught course approvals to conform with current department practices; (3) reduce the minimum number of classroom hours for a driver education course from 32 hours to 24 hours, allowing providers to streamline educational materials delivered to students and increase content mastery; and (4) increase the maximum hours of daily driver education for prospective students by providers from four to six hours, allowing providers to more efficiently offer classroom and in-car instruction.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Many holders of driver education provider licenses are small or micro-businesses. However, the agency does not track employee numbers or gross receipt amounts for its license holders, so the number of such businesses cannot be estimated. The proposed rules do not impose any adverse costs on small or micro-businesses. All driver education courses currently exceed the minimum number of hours, and no provider is required to reduce the hours in their driver education course curriculum, therefore no cost is required to comply. Any costs that might be entailed in complying with the minor changes to the curriculum language will be minimal.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation.

The proposed rules require a decrease in the classroom hours for the teen course from 32 to 24.

The proposed rules expand an existing regulation by adding failure to update curriculum post-audit as required as an additional reason for the suspension of the provider's right to receive driver education certificates; and by authorizing a public school to determine a combination of methods of instruction that can be provided in the six hours of driver education training allowed.

The proposed rules limit a regulation by removing the requirement for a renewing driver education provider to submit a current list of all motor vehicles used for instruction, and by removing the signature requirement for a driving training entity ordering driver education certificates.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.2, §84.3

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.2. Definitions.

Words and terms defined in the Code have the same meaning when used in this chapter. The following words and terms have the following meanings when used in this chapter, unless the context clearly indicates otherwise.

(1) ADE-1317--The driver education certificate of completion confirming student completion of a department-approved driver education course exclusively for adults.

(2) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a driver training provider or course [~~in order~~] to evoke a desire to patronize that driver training provider or course. This includes meta tags and search engines.

(3) Behind-the-wheel instruction--Driving instruction of a licensed student driver conducted with a TDLR licensed instructor, or authorized parent or individual pursuant to Texas Education Code §1001.112.

(4) [~~(3)~~] Branch location--A licensed in-person driver education provider that has the same ownership and name as a licensed primary in-person driver education provider but has a different physical address from the primary provider.

(5) [~~(4)~~] Code--Refers to Texas Education Code, Chapter 1001.

(6) [~~(5)~~] Contract site--An accredited public or private secondary, or postsecondary school approved as a location for a driver education course of a licensed driver education provider.

(7) [~~(6)~~] DE-964--The driver education certificate of completion confirming completion of an approved minor and adult driver education course.

(8) [~~(7)~~] Education Service Center (ESC)--A public school district service organization of the Texas Education Agency governed by Texas Education Code, Chapter Eight.

(9) [~~(8)~~] Endorsement--The method by which a driver education course is delivered to the student, whether in-person, online or parent-taught.

(10) In-car instruction - Refers to observation instruction and behind-the-wheel instruction.

(11) [~~(9)~~] Instructional Hour (also known as "Clock Hour"):

(A) Driver Education Provider Instructional Hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(B) Driving Safety Provider Instructional Hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(12) [~~(10)~~] Personal validation question--A question designed to establish the identity of the student by requiring an answer related to personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(13) [~~(11)~~] Primary driver education provider--The main business location for a licensed in-person driver education provider.

(14) [~~(12)~~] Public or private school--A public or private secondary school accredited by the Texas Education Agency.

(15) Registered agent--An individual Texas resident or an organization on whom may be served process, notice, or demand required or permitted by law to be served on a filing entity, domestic or foreign. Registered agents must be designated and maintained in accordance with Texas Business Organizations Code, Chapter Five.

(16) [~~(13)~~] Relevant driver training entity--Refers to a licensed driver education provider, exempt driver education school, public or private school, education service center, college, or university.

(17) Supervised practice--Driving instruction of a licensed student driver conducted with a TDLR licensed instructor, or in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2), or authorized parent or individual pursuant to Texas Education Code §1001.112.

(18) [~~(14)~~] Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered, and supplied by driving safety providers for issuance to students confirming completion of an approved driving safety course, and that meets the requirements of Texas Transportation Code, Chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(19) [~~(15)~~] Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

§84.3. Materials Adopted by Reference.

(a) The minimum requirements for course content, classroom instruction, in-car, simulation, and range training required by this chapter for a minor and adult driver education course are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety (POI-DE), December 2024 [~~May 2022~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

(b) The minimum requirements for course content and instruction for a driver education course exclusively for adults are the standards established in the Program of Organized Instruction in Driver Education and Traffic Safety Exclusively for Adults Six-Hour Course (POI-Adult Six-Hour), December 2024 [~~May 2022~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

(c) The minimum requirements for course content and instruction for a driving safety course are the standards established in the Course of Organized Instruction for Driving Safety, (COI-Driving Safety), December 2024 [~~May 2022~~] Edition, created and distributed by the department, which is adopted into these rules by reference.

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. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40, 84.43, 84.44, 84.46

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.40. Driver Education Provider Licensure Requirements.

(a) Application. An application for licensure as a driver education provider must be made on forms prescribed by the department[,] and be accompanied by the appropriate fees. An application for a branch driver education provider license must not have the same physical address as the primary provider. A license application is valid for one year from the date it is filed with the department.

(b) Bond requirements. In the case of an original or a change of owner application, an original bond must be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file must be submitted. The bond or the continuation agreement must be executed on the form provided by the department.

(c) Verification of driver education provider ownership. In the case of an original or change of owner application for a driver education provider, the owner must provide verification of ownership to the department.

(d) Change of ownership of a driver education provider. A change of ownership occurs when there is a change in the control of the provider. The control of a provider is considered to have changed:

(1) in the case of ownership by an individual, when more than 50 percent of the provider has been sold or transferred;

(2) in the case of ownership by a partnership or a corporation, when more than 50 percent of the provider, or of the owning partnership or corporation has been sold or transferred; or

(3) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the provider.

(e) Purchase of a driver education provider.

(1) A person who purchases a licensed driver education provider must obtain an original license or branch location license as applicable.

(2) The purchaser must assume all refund liabilities incurred by any former owner as well as the liabilities, duties, and obligations under the enrollment contracts between the students and any former owner before the transfer of ownership.

(f) New location or change of address.

(1) The department must be notified in writing of any change of address at least fifteen (15) working days before the move.

(2) The driver education provider must submit the appropriate change of address fee prior to the actual move.

(3) If a student is not willing or able to change locations, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(g) Renewal of driver education provider license. An application for the renewal of a license for a driver education provider must be submitted before the expiration of the license and include the following:

(1) the renewal fee;

(2) a current list of instructors at the school, if applicable; and

(3) an executed bond or executed continuation agreement for the bond, currently approved by and on file with the department. [; and]

[(4) if applicable, a current list of all motor vehicles used for instruction.]

(h) Denial, revocation, or conditional license. The authority to operate a branch location ceases if a primary driver education provider license is denied or revoked. The operation of a branch location license may be subject to any conditions placed on the continued operation of the primary driver education provider. A driver education provider license for a branch location may be denied, revoked, or conditioned separately from the license for the primary location.

(i) Driver education provider closure.

(1) The driver education provider owner must notify the department at least fifteen (15) working [business] days before the anticipated provider closure. In addition, the driver education provider owner must provide written notice of the actual discontinuance of the operation on the day of cessation of classes. A driver education provider must make all records available for review to the department upon department request.

(2) The department may declare a driver education provider to be closed:

(A) when the provider no longer has the facilities, vehicles, instructors, or equipment to provide training pursuant to this chapter;

(B) when the provider has stopped delivering instruction and training in driver education and has failed to fulfill contractual obligations to its students;

(C) when the provider informs the department in writing of its intention to no longer deliver instruction or training in driver education and returns all unissued driver education certificates or certificate numbers; or

(D) when the provider owner allows the license to expire.

(3) If a branch location closes and a student is not willing or able to complete the training at the primary location, a pro-rata refund (without deducting any administrative expense) must be made to the student.

(j) A driver education provider must not state or imply that a driver's license, permit, or DE-964 is guaranteed or assured to any student or individual who will take or complete any instruction, or enroll, or otherwise receive instruction from any driver education provider.

(k) Contract site. An in-person driver education provider may conduct a course at a contract site, upon execution of a legal written agreement between the licensed driver education provider and an authorized representative for the contract site to provide driver education instruction. The course is subject to the same rules that apply to the licensed driver education provider, including inspections by department representatives. An on-site inspection is not required prior to use of the site. The written agreement is subject to the recordkeeping requirements under §84.81.

§84.43. Driver Education Certificates.

(a) Relevant driver training entities.

(1) A relevant driver training entity may request driver education certificates or certificate numbers by submitting an online[~~, mailed or faxed~~] department prescribed order form, [~~signed by an authorized representative of the relevant driver training entity,~~] stating the number of driver education certificates or certificate numbers to be purchased and include payment of all appropriate fees. [~~A signature is not required for orders placed through the online system.~~]

(2) Relevant driver training entities must:

(A) issue driver education certificates or certificate numbers only to students who have successfully completed the applicable portion of the approved driver education course;

(B) issue driver education certificates or certificate numbers in serial number order as purchased from the department;

(C) indicate the serial number of the original driver education certificate or certificate number on such certificate or certificate number and any issued duplicate, if necessary;

(D) not use an ADE-1317 driver education certificate or certificate number to replace a DE-964 driver education certificate or certificate number;

(E) not transfer unassigned or blank driver education certificates or certificate numbers at any time;

(F) maintain effective protective measures to ensure the security of driver education certificates or certificate numbers to prevent the unauthorized production or misuse of the certificates, and for the recovery of lost data (electronic or otherwise) for such certificates or certificate numbers;

(G) maintain reconciliation records of all purchased, issued, unissued or unassigned driver education certificates or certificate numbers in ascending serial number order, and ensure security and recovery of the reconciliation record data;

(H) make all records available for review by representatives of the department upon request;

(I) return unissued driver education certificates or certificate numbers to the department within thirty (30) calendar days from the date of the discontinuance of the driver education program, unless otherwise notified by the department;

(J) report to the department all unaccounted driver education certificates or certificate numbers within fifteen (15) working days of the discovery of the incident;

(K) conduct an investigation to determine the circumstances surrounding their unaccounted driver education certificates and report the investigation findings, including preventative measures for recurrence, to the department within thirty (30) calendar days of the discovery;

(L) develop and maintain effective policies and processes to ensure constant privacy, security, and integrity of confidential student information, personal and financial, and make the privacy policy available to all students; and

(M) ensure that the front of each driver education certificate contains the department's complaint contact information and current department telephone number in a font that is visibly recognizable.

(3) Each unaccounted original or duplicate driver education certificate or certificate number (whether lost, stolen, blank, or unissued) may be considered a separate violation.

(4) The right to receive driver education certificates may be immediately suspended for a period determined by the department if:

(A) a department investigation is in progress and the department has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the relevant driver training entity or its designee fails to provide information on records requested by the department, or fails, post-audit, to update curriculum based on changes in department rules or applicable law within the required time.

(5) The driver education certificate is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the driver education certificate may result in suspension or revocation of instructor and/or provider credentials or program approval and/or criminal prosecution.

(b) Driver education provider responsibilities.

(1) Driver education certificates or certificate numbers must only be ordered by driver education providers. The primary driver education provider must order all driver education certificates and certificate numbers for its branch locations.

(2) A driver education provider must issue the "For Learner License Only" portion of the DE-964 certificate to the student upon successful completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(3) A driver education provider must issue the "For Driver License Only" portion of the DE-964 certificate to the student upon successful completion of the driver education course.

(4) The exception to paragraphs (2) and (3) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the driver education instructor, or the designated parent-taught driver education instructor as applicable. The

name of the driver education provider owner or its designee may be written, stamped, or typed.

(c) Public or Private Schools, Education Service Centers, Colleges, or Universities responsibilities.

(1) The driver education certificates must be issued to the superintendent, college, or university chief school official, ESC director, or their designee responsible for managing the certificates for the school. This does not remove the superintendent, college, or university chief school official, or ESC director from obligations pursuant to this subchapter to oversee the program.

(2) The department will accept purchase requisitions from school districts.

(3) Each superintendent, college, or university chief school official, ESC director, or their designee must ensure that the policies concerning driver education certificates are followed by all individuals who have responsibility for the certificates.

(4) The superintendent, college, or university chief school official, ESC director, or their designee must ensure that employees issue a driver education certificate only to a person who has successfully completed the entire portion of the course for which the driver education certificate is being used.

(A) The "For Learner License Only" portion of the driver education certificate must be issued to the student upon completion of Module One of the Program of Organized Instruction for Driver Education and Traffic Safety.

(B) The "For Driver License Only" portion of the driver education certificate must be issued to the student upon completion of the driver education program.

(C) The exception to subparagraphs (A) and (B) is a request for transfer by the parent or legal guardian of the student. The transfer policy will be followed to comply with the parent or legal guardian request for transfer.

(5) The DPS copy of a driver education certificate must contain the original signature of the driver education instructor. The name of the superintendent, college, or university chief school official, ESC director, or their designee may be written, stamped, typed, or omitted.

(6) The superintendent, college, or university chief school official, ESC director, or their designee must complete the affidavit on the driver education certificate if the licensed instructor has left the driver education program, become seriously ill or deceased.

§84.44. Driver Education Instructor License.

(a) An application for licensure as a driver education instructor must be made on forms prescribed by the department and be accompanied by the appropriate fees. A license application is valid for one year from the date it is filed with the department. A person applying for an original driver education instructor license must:

(1) hold a valid class A, B, C, or CDL driver's license, other than a learner license or provisional license, for the preceding three years, that has not been revoked or suspended in the preceding three years;

(2) submit a completed application with non-refundable application fee as prescribed by the department;

(3) submit the instructor licensing fees;

(4) submit a national criminal history record information review fee; and

(5) provide fingerprints to the Texas Department of Public Safety (DPS) through the IdentoGo Fingerprint Service or any other method required by the DPS.

(b) A driver education instructor may perform instruction and administration of the classroom and in-car phases of driver education, as prescribed in the POI-DE, and the classroom phase of the POI-Adult Six-Hour.

(c) An application for renewal of a driver education instructor license must be submitted on forms prescribed by the department. A complete renewal application must include the following:

(1) the renewal fee;

(2) provide a valid driver license record that meets the requirements stated in §84.44(a)(1); and

(3) if selected for audit, proof of successful completion of at least two hours of continuing education credit during the license renewal period relating to driver education, driving safety, and instructional techniques.

(d) The department will employ an audit system for reporting completion of continuing education. The licensee is responsible for maintaining a record of the licensee's continuing education experiences. The certificates, transcripts, or other documentation verifying the completion of continuing education hours must not be forwarded to the department at the time of renewal unless the department has selected the licensee for audit.

(e) The audit process for continuing education will be as follows:

(1) The department will select for audit a random sample of licensees for each renewal period. Licensees will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee must submit copies of certificates, transcripts, or other documentation satisfactory to the department, verifying the licensee's attendance, participation, and completion of the continuing education. All documentation must be provided at the time of the renewal.

(3) Failure to timely furnish documentation or providing false information during the audit process or renewal process are grounds for disciplinary action against the licensee.

(f) An applicant for a driver education instructor license or its renewal must [~~successfully~~] pass a criminal history background check.

§84.46. Attendance and Makeup.

(a) Written or electronic records of student attendance must be prepared daily to document the attendance and absence of the students. A student must make up any time missed. Electronic signatures must comply with Texas Business and Commerce Code, Chapter 322.

(b) Driver education training offered by the provider must not exceed six hours per day. In-person driver education providers may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers [~~Schools~~]). In-car instruction provided by the provider must not exceed four hours per day as follows:

(1) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(2) four hours or less of simulation instruction; or

(3) four hours or less of multicar range instruction; or

(4) any combination of the methods delineated in this subsection that does not exceed four hours per day.

(c) A student must complete the hours of instruction for the required classroom and in-car phases of the minor or adult driver education course, including any makeup lessons, within the timeline specified in the original student enrollment contract.

(d) Amendments [~~Variances~~] to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the provider owner and must be agreed to in writing by the parent or guardian.

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. PARENT-TAUGHT DRIVER EDUCATION

16 TAC §84.51, §84.52

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.51. Submission of Parent-Taught Course for Department Approval.
§84.52. Cancellation of Department Approval.

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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16 TAC §§84.50 - 84.52

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.50. Parent-Taught Driver Education Program Requirements.

(a) Prior to teaching a department-approved parent-taught driver education course, a parent or other individual authorized under §1001.112 of the Code, must submit a completed request for Parent-Taught Driver Education Instructor Designation Service Application with a non-refundable fee to the department.

(b) After receiving the Parent-Taught Driver Education Instructor Designation Service Application, the instructor must obtain one of the department approved parent-taught driver education courses to fulfill program requirements.

(c) The parent-taught driver education provider must provide the appropriate portion of a control-numbered DE-964 to a person who has completed the objectives found in Module One: Traffic Laws of the POI-DE, or who has successfully completed the entire portion of the course for which the DE-964 is being issued.

(d) The program includes both classroom and in-car instruction phases. Instruction is limited to six hours per day, including not more than two hours of behind-the-wheel instruction per day.

(e) The parent, or other individual authorized under §1001.112 of the Code, may teach both instruction phases, or utilize a licensed driver education provider, or public driver education school for either phase.

(f) The fourteen (14) hours of in-car instruction must be taught under one program: either parent-taught, or a licensed driver education provider, or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(g) The remaining hours of classroom following Module One: Traffic Laws of the POI-DE, must be taught under one program, either parent-taught, a licensed driver education provider, or public driver education school.

(h) The additional thirty (30) hours of behind-the-wheel supervised practice must be completed in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(i) A student may apply to the Department of Public Safety for a learner license after completion of the objectives found in Module One: Traffic Laws of the POI-DE.

(j) Behind-the-wheel parent-taught driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license [~~on a Texas highway~~].

(k) Behind-the-wheel parent-taught driver education instruction and supervised practice may begin after the student receives a

learner license. The required curriculum that must be followed includes:

(1) a minimum of 44 hours that consists of: seven hours behind-the-wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code;

(2) seven hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and

(3) 30 hours of behind-the-wheel supervised practice, including at least 10 hours at night, certified by a parent or guardian who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 hours of behind-the-wheel supervised practice must be endorsed by a parent or legal guardian if the student is a minor.

~~[(k) Behind-the-wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours that includes: seven hours behind the wheel supervised practice instruction in the presence of a parent or other individual authorized under §1001.112 of the Code; seven hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and 30 hours of behind the wheel supervised practice, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).]~~

§84.51. Submission of Parent-Taught Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the applicable minimum standards set forth in the Code, the department will approve the course. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a).

(c) A written request is required within thirty (30) days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

(d) The department will retain submitted materials according to the department's retention schedule.

(e) Course identification. All parent-taught courses must display the parent-taught provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(f) A parent-taught driver education provider may accept students redirected from a website if the student is redirected to a webpage that clearly identifies the parent-taught provider and license number offering the course. This information must be visible before and during the student registration and course payment processes.

§84.52. Revocation of Department Approval.

(a) A parent-taught driver education provider may be revoked upon finding that the course does not meet the standards required under §1001.112 or §1001.2043(a) of the Code.

(b) Prior to revocation, the department will allow the parent-taught driver education provider ninety (90) days from the date of notification the opportunity to correct the noted deficiencies in the curriculum.

(c) Failure to adequately respond within the required time will result in revocation of the course.

(d) If a parent-taught driver education course is revoked by the department, the entity must wait thirty (30) days before applying for a new Parent Taught Driver Education Provider license.

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

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SUBCHAPTER E. PROVIDERS

16 TAC §84.60, §84.63

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.60. Driving Safety Provider License Requirements.

(a) Application for driving safety provider license. An application for a driving safety provider license must be made on forms prescribed by the department, and be accompanied by the appropriate fee. A license application is valid for one year from the date it is filed with the department.

(b) Bond requirements for providers. In the case of an original or a change of owner application, an original bond must be provided in the amount of $10,000. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement must be executed on the form prescribed by the department.

(c) Provider license. The provider license must indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for driving safety provider. In the case of an original or change of owner application for a driving safety provider, the provider owner must provide verification of ownership.

(e) Purchase of driving safety provider. A person or persons purchasing a licensed driving safety provider must obtain an original license and bond. The contract or any instrument transferring the ownership of the driving safety provider must include the following statements:

(1) The purchaser must assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership; and

(2) The purchaser must assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(f) New location. The department must be notified in writing of any change of address of a driving safety provider or its registered agent at least fifteen (15) working days before the move. The appropriate fee and all documents must also be submitted.

(g) Renewal of driving safety provider license. A complete application for the renewal of a license for a driving safety provider must be submitted before the expiration of the license and must include the following:

(1) a completed application for renewal;

(2) an annual renewal fee; and

(3) an executed bond or executed continuation agreement for the bond currently on file with the department.

(h) Provider closure. A provider owner must notify the department of its closure date at least fifteen (15) working [~~business~~] days before the closure. A provider must make all records and all used and unused uniform certificates of course completion and course completion certificate numbers available for review by the department upon request.

§84.63. Uniform Certificate of Course Completion for Driving Safety Course.

(a) For purposes of this section, the term "certificate" refers to uniform certificates of course completion issued by the department to driving safety providers in paper format, and certificate numbers issued to driving safety providers for inclusion on department-approved driving safety course certificate completion forms.

(b) Driving safety provider responsibilities. Providers are responsible for original and duplicate certificates in accordance with this subsection. Each driving safety provider must:

(1) submit a plan for the electronic issuance of certificates for approval by the department prior to its implementation;

(2) issue certificates that comply with the design specifications approved by the department;

(3) develop and maintain a department-approved method for securing, issuing, and maintaining original and duplicate certificates that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates, and allows for the recovery of lost data (electronic or otherwise) for such certificates;

(4) issue certificates only to students who have successfully completed all elements of the provider's approved driving safety course;

(5) maintain secure files (electronic or otherwise) with data pertaining to all certificates purchased from the department, and must make available to the department, upon request, an ascending numerical accounting record of the numbered certificates issued;

(6) issue all original and duplicate certificates using first-class or enhanced postage, equivalent commercial delivery method, or a department-approved electronic issuance method;

(7) sequentially number original certificates from the block of numbers purchased from the department;

(8) use certificates only for the course for which the certificates were ordered from the department;

(9) implement and maintain methods for efficiently issuing original certificates so that issuance of duplicate certificates is kept at a minimal rate;

(10) report all unaccounted original and duplicate certificates or unissued certificates or duplicates to the department within 15 working [~~business~~] days of the discovery of the incident;

(11) conduct an investigation to determine the circumstances surrounding the unaccounted items noted in paragraph (10), and submit a report of the findings of the investigation, including preventative measures for recurrence, to the department within thirty (30) days of the discovery; and

(12) report original and duplicate certificate data, by secure electronic transmission, to the department within five (5) days of issuance using guidelines established and provided by the department. The issue date indicated on the certificate shall be the date the provider issues the certificate to the student.

(c) Disposition of original or duplicate certificates.

(1) The provider's records, including unissued or unnumbered original and duplicate certificates, must be available for review by representatives of the department.

(2) A driver safety provider must not issue, transfer, or transmit an original or duplicate certificate bearing the serial number of a certificate or duplicate previously issued.

(3) Each unaccounted, missing, blank, or unissued original or duplicate certificate may be considered a separate violation. This may include a lost, stolen, or otherwise unaccounted original or duplicate certificate.

(4) When a duplicate certificate is issued by a provider, the duplicate certificate shall bear a serial number from the block of numbers purchased from the department by the provider. The duplicate certificate must clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(5) Any item on a duplicate certificate that has different data than that shown on the original certificate must clearly indicate both the original data and the replacement data; for example, a change in the date of course completion must show the correct date and "changed from XX," where "XX" is the date shown on the original certificate.

(6) If the student requests a duplicate certificate within thirty (30) days of the date of issue of the original certificate because the original was not received, unusable, or was issued with errors due to no fault of the student, the provider must issue the duplicate at no cost to the student. Driving safety providers must include this information in the student enrollment contract.

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §84.80

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.80. Names and Advertising.

(a) A licensed driver training provider must not conduct business or advertise under a name that is not distinguishable from a name used by any other licensed driver training provider [~~provide~~], or tax-supported educational establishment in this state, unless specifically approved in writing by the department.

(b) Use of names other than the approved provider name may constitute a violation of this section.

(c) Branch providers must conduct business using the same name as the primary driver education provider.

(d) Any publicly posted advertisement from a license applicant subject to license approval by the department must include the following information:

(1) A notice stating "Driving School Coming Soon"; and

(2) Display a functioning phone number and email address for the provider within the advertisement.

(e) An applicant applying for approval of a new provider license must not:

(1) Enroll students or conduct classes in driver training prior to department approval of the license application;

(2) Accept payments from prospective students; or

(3) Publish advertisements including the provider name or upcoming class sessions.

(f) A driver training provider must not advertise without including the provider name and license number as it appears on the provider license.

(g) All advertisements of a multiple classroom location or alternative delivery method shall meet the requirements in subsections (a) - (f).

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 August 19, 2024.

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Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 29, 2024

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.502, 84.504

STATUTORY AUTHORITY

The proposed repeals are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeals are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed repeals.

The legislation that enacted the statutory authority under which the proposed repeals are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.500. Courses of Instruction for Driver Education Providers.
§84.501. Driver Education Course Alternative Method of Instruction.
§84.502. Driving Safety Courses of Instruction.
§84.504. Driving Safety Course Alternative Delivery Method.

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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16 TAC §§84.500 - 84.505

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.500. Courses of Instruction for Driver Education Providers.

(a) The educational objectives of driver training courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; instruction on law enforcement procedures for traffic stops in accordance with provisions of the Community Safety Education Act; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; leaving children in vehicles unattended; distractions; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; recreational water safety; reducing traffic violations, injuries, deaths, and economic losses; the proper use of child passenger safety seat systems; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This subsection contains requirements for driver education courses. All course content and instructional material must include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval. For courses offered in a language other than English, the course materials must be accompanied by a written declaration affirming that the translation of the course materials is true and correct in the proposed language presented. Such course materials are subject to the approval of the department prior to its use by a driver education provider.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over must consist of:

(i) a minimum of 24 hours of classroom instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person;

(ii) seven (7) hours of behind-the-wheel instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person;

(iii) seven (7) hours of in-car observation instruction in the presence of a person who holds a driver education instructor license or who meets the requirements for a driver education course conducted by a parent, legal guardian, or designated person; and

(iv) 30 hours of behind-the-wheel supervised practice, including at least 10 hours of nighttime practice, in the presence of a person at least 21 years of age, has at least one year of driving experience, and holds a valid driver license. The 30 hours of behind-the-wheel supervised practice are to be certified by a parent, legal guardian, or designated person if the student is a minor. Simulation hours must not be substituted for the behind-the-wheel supervised practice. Behind-the-wheel supervised practice is limited to two hours per day.

(B) Providers are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car instruction, simulation, and multicar range must include the educational objectives established by the department in the POI-DE and the requirements of this subchapter.

(D) Driver education providers that desire to instruct students age 14 and over in an in-person classroom program must provide the same beginning date for each student in the same class of 36 or less. No student must be allowed to enroll and start the classroom phase after the fifth hour of classroom instruction has begun.

(E) Students must receive classroom instruction from an instructor who is licensed by the department. An instructor must be in the classroom and available to students during the entire 24 hours of instruction, including self-study assignments. Instructors must not have other teaching assignments or administrative duties during the 24 hours of classroom instruction.

(F) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI-DE may be used as part of the required 24 hours of in-person classroom instruction. Such supplemental instruction must not exceed 720 minutes of total in-person classroom hours.

(G) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(H) Each classroom student must be provided a driver education textbook or access to instructional materials that are in compliance with the POI-DE approved for the school. Instructional materials, including textbooks, must be in a condition that are legible and free of obscenities.

(I) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the classroom phase of the driver education course.

(J) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than thirty-six (36) students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(K) When a student changes providers, the provider must follow the current transfer policy developed by the department.

(2) Driver Education Behind-the-Wheel and In-Car Instruction

(A) All behind-the-wheel instruction must include actual driving operation by the student. A provider must not permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Providers that allow one-on-one instruction must notify the parents in the contract.

(B) A student must have a valid driver's license or learner license in his or her possession during any behind-the-wheel instruction or supervised practice.

(C) All behind-the-wheel instruction and supervised practice extended by the provider must begin no earlier than 5:00 a.m. and end no later than 11:00 p.m.

(D) A provider may use multimedia systems, simulators, and multicar driving ranges for behind-the-wheel and observation instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving

range must meet state specification developed by DPS and the department. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(E) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel and observation instruction. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel and observation instruction.

(c) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws of the POI-DE.

(d) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(e) The driver education provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

§84.501. Driver Education Course Alternative Method of Instruction.

(a) Approval process. The department may approve an endorsement for an alternative method whereby a driver education provider is approved to teach all or part of the classroom portion of a driver education course by an alternative method of instruction (AMI) that does not require students to be physically present in a classroom that meets the following requirements.

(1) Standards for approval. The department may approve a driver education provider to teach all or part of the classroom portion of a driver education course by an AMI that does not require students to be present in a classroom only if:

(A) the AMI includes testing and security measures that the department determines are adequately secure to ensure course content and personal validation;

(B) the course satisfies any other requirement applicable to a course in which the classroom portion is taught to students in the usual classroom setting;

(C) a student and instructor are in different locations;

(D) the AMI instructional activities are integral to the academic program; and

(E) adequate communication between a student and instructor and among students is emphasized.

(2) Application. The provider must submit a completed AMI application along with the appropriate fee. The application for AMI approval must be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the curriculum as aligned with the POI-DE.

(3) Provider license required. A person or entity offering a classroom driver education course to Texas students by an AMI must hold a driver education provider license. The driver education provider is responsible for the operation of the AMI.

(b) Course content. The AMI must deliver the same topics, instruction requirements, and course content as required by the department in the POI-DE.

(1) Editing. The material presented in the AMI must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(2) Irrelevant material. Advertisement of goods and services must not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented must not appear during the actual instructional times of the course.

(3) Student breaks. The AMI is allowed five minutes of break per instructional hour for all phases, for a total of 120 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(4) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 24 hours (1,440 minutes) to complete the course. A course that demonstrates that it contains 1,320 minutes of instructional content shall mandate that students take 120 minutes of break time or provide additional educational content for a total of 1,440 minutes (24 hours). In order to demonstrate that the AMI contains sufficient content, the AMI must use the following methods.

(A) Word count. For written material that is read by the student, the total number of words in the written sections of the course must be divided by 180. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. There shall be a minimum of 90 minutes of multimedia presentation. The provider owner must calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 720 minutes.

(C) Charts and graphs. The AMI may assign one minute for each chart or graph.

(D) Time Allotment for Questions. The provider owner may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time allotted for all charts, graphs, questions, and breaks equals or exceeds the minimum 1,440 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 24-hour requirement.

(5) Academic integrity. The academic integrity of the AMI for a classroom driver education course must include:

(A) goals and objectives that are measurable and clearly state what the participants should know or be able to do at the end of the course;

(B) a clear, complete driver education classroom course overview and syllabus;

(C) content and assignments that are sufficient to teach the standards being addressed; and

(D) if online, clearly stated academic integrity and Internet etiquette expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(6) Instructional design. Instructional design of AMI for classroom driver education must:

(A) ensure each lesson includes a lesson overview, objectives, resources, content and activities, assignments, and assessments to provide multiple learning opportunities for students to master the content;

(B) include instruction that provides opportunities for students to engage in higher-order thinking, critical-reasoning activities, and thinking in increasingly complex ways;

(C) include a statement that notifies the student of the provider owner's security and privacy policy regarding student data, including personal and financial data; and

(D) include assessment and assignment answers.

(c) Personal validation. The AMI must maintain a method to validate the identity of the person taking the course. The personal validation system must incorporate one of the following requirements.

(1) Provider-initiated method. The AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the in-person classroom.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course must ask a minimum of 60 personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(3) Multifactor authentication method. The AMI may use a multifactor or two-factor authentication for personal validation.

(d) Content validation. The AMI must incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The AMI may include built-in timers to ensure that 1,440 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The AMI must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the AMI must have a test bank of at least four questions.

(B) Question difficulty. The question must be short answer, multiple choice, essay, or a combination of these forms. The question must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the AMI must either require the student to view the multimedia clip again or the AMI fails the student from the course. If the AMI requires the student to view the multimedia clip again, the AMI must present a different question from its test bank for that multimedia clip. The AMI may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The AMI must not identify the correct answer to the multimedia question.

(3) Mastery of course content. The AMI must test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions must include at least:

(i) 20 questions each from Module One listed in the POI-DE; and

(ii) 10 questions each from the remaining modules.

(B) Placement of questions. The mastery of course content questions must be asked at the end of each module.

(C) Question difficulty. Course content mastery questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30 percent of the questions asked on a module examination, the AMI must require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI must again test the student's mastery of the material. The AMI must present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30 percent of the questions asked on the final examination, the AMI must retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student fails the course.

(e) Student records. The AMI must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mas-

tery of the course material. The provider must ensure that the student record is readily, securely, and reliably available for inspection by a department-authorized representative. The student records must contain all information required in §84.81 (relating to Recordkeeping Requirements) and the following information.

(1) A record of all questions asked and the student's responses.

(2) The name or identity number of the staff member entering comments or revalidating the student.

(3) The name or identity number of the staff member retesting the student.

(4) If any answer to a question is changed by the provider for a student who inadvertently missed a question, the provider must provide both answers and a reasonable explanation for the change.

(5) A record of the time the student spent in each unit of the AMI and the total instructional time the student spent in the course.

(f) Additional requirements for AMI courses. Courses delivered via the Internet or technology must also comply with the following requirements.

(1) Course identification. All AMI courses must display the driver education provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driver education provider offering an AMI course may accept students redirected from another website if the student is redirected to the webpage that clearly identifies the name and license number of the provider offering the AMI course. This information must be visible before and during the student registration and course payment processes.

(g) Additional requirements for video courses.

(1) Delivery of the material. For AMIs delivered using videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. The video course must include no more than 720 minutes of multimedia that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 1,440 minutes of required instruction must be video material that is relevant to required course instruction content.

(A) A video AMI must ask, at a minimum, at least one course validation question for each multimedia clip of more than 180 seconds.

(B) A video AMI must devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than 180 seconds.

(h) Standards for AMIs using new technology. For AMIs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards must be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the usual classroom setting.

(i) Modifications to the AMI. The licensed provider for the approved course on which the AMI is based must ensure that any modification to the AMI is consistent with applicable law, department rules and the POI-DE.

(j) Termination of the provider's operation. Upon termination, providers must deliver any missing student data to the department within five days of termination.

(k) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the classroom portion of the curriculum, and for technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

(l) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 and over must provide the same beginning date for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the fifth hour of classroom instruction has been completed.

§84.502. In-Person Driver Education Course Exclusively for Adults.

(a) Driver education course exclusively for adults. Courses offered in an in-person classroom facility to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222 and §521.1601, must be offered in accordance with the following:

(1) In-person approval process. The department may approve an endorsement for a driver education course exclusively for adults to be offered in-person if the course meets the following requirements.

(A) Application. The driver education provider must submit a completed application along with the appropriate fee;

(B) Instructor license required. Students must receive classroom instruction from a licensed driver education instructor; and

(C) Minimum course content. The driver education course exclusively for adults must consist of six clock hours of classroom instruction that meets the minimum course content and instruction requirements contained in the POI-Adult Six-Hour.

(2) Course management. An approved adult driver education course must be presented in compliance with the following:

(A) The instructor must be physically present in appropriate proximity to the student for the type of instruction being given. A licensed driver education instructor, or provider owner must sign or stamp all completed classroom instruction records.

(B) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the course.

(C) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course must not exceed 150 minutes of instruction.

(D) Each student, including makeup students, must be provided their own seat and table or desk while receiving classroom instruction. A provider must not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the provider's location.

(E) A minimum of 330 minutes of instruction is required.

(F) The total length of the course must consist of a minimum of 360 minutes.

(G) Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content.

(b) Students must not receive a driver education certificate of completion unless that student receives a grade of at least 70 percent on the highway signs examination and at least 70 percent on the traffic laws examination as required under Texas Transportation Code §521.161.

(c) The driver education provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

§84.503. Online Driver Education Course Exclusively for Adults.

(a) Online approval process. The department may approve an endorsement for an online driver education course exclusively for adults to be offered if the course meets the following requirements.

(1) Application. The applicant for an online driver education provider license must submit a completed application along with the appropriate fee.

(2) Online Provider license required. A person or entity offering an online driver education course exclusively for adults must hold an online driver education provider license.

(3) The online driver education provider must be responsible for the operation of the online course.

(4) Students must receive classroom instruction from a licensed driver education instructor.

(b) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code and as described in the POI-Adult Six-Hour.

(1) Length of course. The course must be six hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(2) Required material. A copy of the current edition of the "Texas Driver Handbook" or equivalent study material must be made available to each student enrolled in the course.

(3) Editing. The material presented in the online course must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(4) Irrelevant material. Advertisement of goods and services, and distracting material not related to driver education must not appear during the actual instructional times of the course.

(5) Minimum content. The online course must present sufficient content so that it would take a student 360 minutes to complete the course. To demonstrate that the online course contains sufficient minutes of instruction, the online course must use the following methods.

(A) Word count. For written material that is read by the student, the course must contain the total number of words in the written sections of the course. This word count must be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the online course must calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 150 minutes.

(C) Charts and graphs. The online course may assign one minute for each chart or graph.

(D) Time allotment for questions. The online course may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(F) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(c) Personal validation. The online course must maintain a method to validate the identity of the person taking the course. The personal validation system must incorporate at least one of the following requirements.

(1) Provider-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(A) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(B) Placement of questions. At least two personal validation questions must appear randomly during each instructional hour, not including the final examination.

(C) Exclusion from the course. The online course must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course must ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(A) Time to respond. The student must correctly answer a personal validation question within 90 seconds.

(B) Placement of questions. At least two personal validation questions must appear randomly during each instructional hour, not including the final examination.

(C) Exclusion from the course. The online course must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(3) Multifactor authentication method. The online course may use a multifactor or two-factor authentication for personal validation.

(d) Content validation. The online course must incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The online course may include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The online course must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the online course must have a test bank of at least four questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course must then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The online course must not identify the correct answer to the multimedia question.

(3) Course participation questions. The online course must test the student's course participation by asking at least two questions each from Topics Two through Eight of Chapter Four in the POI-Adult Six Hour.

(A) Test bank. The test bank for course participation questions must include at least ten questions each from Topics Two through Eight of Chapter Four in the POI-Adult Six-Hour.

(B) Placement of questions. The course participation questions must be asked at the end of the major unit or the section in which the topic is covered.

(C) Question difficulty. Course participation questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Comprehension of course content. The online course must test the student's mastery of the course content by administering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(A) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(B) Placement of questions. The mastery of course content questions must be asked at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions must be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(D) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the online course must retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student fails the course.

(e) Student records. The online course must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The provider must ensure that the student record is readily, securely, and reliably available for inspection by a department representative. The student records must contain all information required in §84.81 (relating to Recordkeeping Requirements) and contain the following information:

(1) a record of all questions asked and the student's responses;

(2) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(3) both answers and a reasonable explanation for the change if any answer to a question is changed by the provider for a student who inadvertently missed a question; and

(4) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(f) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.167, and signing the ADE-1317 driver education completion certificate.

(g) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(h) Issuance of certificate. Not later than the 15th working day after the course completion date, the provider must issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(i) Access to instructor and technical assistance. The provider must establish hours that the student may access an instructor trained in the adult driver education curriculum, and for technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the instructor and technical assistance during the specified hours.

(j) Additional requirements for online courses. Courses delivered via the Internet or technology must also comply with the following requirements.

(1) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(2) Navigation. The student must be provided orientation training to ensure easy and logical navigation through the course. The student must be allowed to freely browse previously completed material.

(3) Audio-visual standards. The video and audio must be clear and, when applicable, the video and audio must be synchronized.

(4) Course identification. All online courses must display the driver education provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(5) Domain names. Each provider offering an online course must offer that online course from a single domain.

(6) A driver education provider offering an online course may accept students redirected from a website if the student is redirected to the webpage that clearly identifies the name and license number of the provider offering the online course. This information must be visible before and during the student registration and course payment processes.

(7) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(8) Issuance of certificate. A licensed provider or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

§84.504. Driving Safety Courses of Instruction.

This section contains requirements for traditional classroom driving safety courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Courses of instruction must not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course must be submitted by the driving safety provider and approved prior to being offered.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses must include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; information relating to human trafficking prevention in accordance with the provisions of the Julia Wells Act (Senate Bill 1831, Section 3, 87th Regular Legislature (2021)); information relating to the Texas Driving with Disabilities Program (Senate Bill 2304, 88th Regular Legislature (2023)); implementation of law enforcement procedures for traffic stops in accordance with the provisions of the Community Safety Education Act; the proper use of child passenger safety seat systems; safely operating a vehicle near oversize or overweight vehicles; the passing of certain vehicles as described in Transportation Code §545.157; the dangers and consequences of street racing; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the driving safety provider must affirm that the translation of the course materials is true and correct in the proposed language presented. Such materials are subject to review by the department. Each driving safety course must include the following:

(i) a statement of the course's traffic safety goal;

(ii) a statement of policies related to techniques of instruction, standards, and performance;

(iii) a statement of policies related to student progress, attendance, makeup, and conduct. The policies must be used by each driving safety provider and include the following requirements:

(I) appropriate standards to ascertain the attendance and identity of students. All driving safety providers must use appropriate standards for documenting attendance;

(II) if the student does not complete the entire course, including all makeup lessons within the timeline specified by the court, no credit for instruction shall be granted;

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction in a manner determined by the driving safety provider; and

(IV) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials must not be used in excess of 165 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course;

(vii) instructional activities and resources to be used to present the material (lecture, films, other media, small-group discussions, workbook materials, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide must identify the questions that will be assigned to the groups;

(viii) techniques for evaluating the comprehension level of the students; and

(ix) a completed form cross-referencing the instructional units to the topics identified in Chapter Four of the COI-Driving Safety. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the department upon request.

(C) Course and time management. Approved driving safety courses must be presented in compliance with the following guidelines and must include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course must consist of a minimum of 360 minutes.

(iii) Sixty (60) minutes of time, exclusive of the 300 minutes of instruction, must be dedicated to break periods or to the topics included in the minimum course content. All break periods must be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment must not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in an in-person classroom must allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day must provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks must be provided after the course introduction and prior to the last unit of the instructional day or

the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics must be approved by the department as part of the course approval, and for each student, the course must be taught in the order identified in the approved application.

(viii) Students must not receive a uniform certificate of course completion unless that student receives a grade of at least 70 percent on the final examination.

(ix) In an in-person classroom, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class must have no more than 50 students.

(x) The driving safety provider must make a reasonable effort to validate the identity of the student at the time of enrollment.

(D) Minimum course content. Driving Safety course content, including video and multimedia, must include current statistical data, references to law, driving procedures, and traffic safety methodology, as shown in the COI-Driving Safety, to assure student mastery of the subject matter.

(E) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course. The comprehensive examination for each driving safety course must include at least two questions from the required units set forth in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Provider-designated persons who offer or provide instruction must not assist students in answering the final examination questions but may facilitate alternative testing. Students must not be given credit for the driving safety course unless they score 70 percent or more on the final test. The provider must identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70 percent on the final examination. The provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(F) The course owner shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(G) The department may alter the due date of the renewal documents by giving the approved course six months' notice. The department may alter the due date to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(H) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(2) The department may revoke approval of any course given to a provider under any of the following circumstances:

(A) Any information contained in the application for the course approval is found to be untrue;

(B) The school has failed to maintain the courses of study on which previous approval was issued;

(C) The provider has been found to be in violation of the Code, and/or this chapter; or

(D) The course has been found to be ineffective in meeting the educational objectives set forth in paragraph (1)(A).

§84.505. Driving Safety Course Alternative Delivery Method.

(a) The driving safety provider may offer a course by alternative delivery method (ADM) that meets the following requirements:

(1) Standards for acceptance. The department may accept an ADM offered by a driving safety provider for an approved driving safety course if the ADM delivers a course in a manner that is at least as secure as an in-person classroom. ADMs that meet the requirements outlined in subsections (b) - (h), shall receive ADM acceptance.

(2) The ADM must deliver the driving safety provider's curriculum as delineated in the course content guide required by §84.504 (relating to Driving Safety Courses of Instruction), and the COI-Driving Safety.

(3) Provider license required. A person or entity offering a driving safety course to Texas students by an alternative delivery method must hold a driving safety provider license. The driving safety provider is responsible for the operation of the ADM.

(b) Course content. The ADM must deliver the same topics, instruction requirements, and course content as the approved driving safety course established by the department in the COI-Driving Safety.

(1) Course topics. The time requirements for each unit and the course described in §84.504(a)(1)(C) and (D) must be met.

(2) Editing. The material presented in the ADM must be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(3) Irrelevant material. Advertisement of goods and services must not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented must not appear during the actual instructional times of the course.

(4) Minimum content. The ADM must present sufficient content so that it would take a student 300 minutes to complete the course. To demonstrate that the ADM contains sufficient content, the ADM must use the following methods.

(A) Word count. For written material that is read by the student, the driving safety provider must count the total number of words in the written sections of the course. This word count must be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. For multimedia presentation, the driving safety provider must calculate the total amount of time it takes for all multimedia presentations to play.

(C) Charts and graphs. The ADM may assign one minute for each chart or graph.

(D) Examinations. The provider may allocate up to 90 seconds for questions presented over the Internet and 90 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and

graphs equals or exceeds 300 minutes, the ADM has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the driving safety provider may submit alternate methodology to demonstrate that the ADM meets the 300-minute requirement.

(5) Student breaks. A course that demonstrates that it contains 300 minutes of instructional content must mandate that students take 60 minutes of break time or provide additional educational content for a total of 360 minutes.

(c) Personal validation. The driving safety provider must ensure the ADM maintain a system to validate the identity of the person taking the course. The personal validation system must incorporate one of the following requirements.

(1) Provider-initiated method. The ADM may use a method that includes testing and security measures that are at least as secure as the methods available in the in-person classroom.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The ADM must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(2) Third party data method. The online course must ask a minimum of 10 personal validation questions randomly throughout the course drawn equally from at least two different databases.

(A) Time to respond. The student must correctly answer the personal validation question within 90 seconds.

(B) Placement of questions. At least one personal validation question must appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The ADM must exclude the student from the course after the student has incorrectly answered more than 30 percent of the personal validation questions.

(D) Correction of answer. The provider may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record must include a record of both answers and an explanation of the reasons why the answer was corrected.

(E) Student affidavits. A student for whom third-party database information is available from fewer than two databases (for example, a student with an out-of-state driver's license) may be issued a uniform certificate of completion upon presentation to the driving safety provider of a notarized copy of the student's driver's license or equivalent type of photo identification and a statement from the student certifying that the individual attended and successfully completed the six-hour driving safety course for which the certificate is being issued and there exists a corresponding student record.

(3) Multifactor authentication method. The AMD may use a multifactor or two-factor authentication for personal validation.

(d) Alternative methods. The driving safety provider may employ an ADM that uses alternate methods that are at least as secure as one of the methods listed above.

(e) Content validation. The driving safety provider must ensure the ADM incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The ADM must include built-in timers to ensure that 300 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The ADM must ask at least one course validation question following each multimedia clip of more than 180 seconds.

(A) Test bank. For each multimedia presentation that exceeds 180 seconds, the ADM must have a test bank of at least four questions.

(B) Question difficulty. Each question must be short answer, multiple choice, essay, or a combination of these forms. The questions must be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the ADM shall either require the student view the multimedia clip again or the ADM must fail the student from the course. If the ADM requires the student to view the multimedia clip again, the ADM must present a different question from its test bank for that multimedia clip. The ADM may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The ADM must not identify the correct answer to the multimedia question.

(3) Mastery of course content. The ADM must allow for testing of the student's mastery of the course content by asking at least two questions from each of the topics listed in Chapter Four, Topics Two through Twelve of the COI-Driving Safety.

(A) Test bank. The test bank for course content mastery questions must include at least ten questions from each of the topics identified in Chapter Four, Topics Two through Twelve of the COI-Driving Safety.

(B) Placement of questions. The mastery of course content questions must be asked either at the end of the major unit or section in which the topic identified in Chapter Four, Topics Two through Twelve of the COI-Driving Safety, (unit examination) or at the end of the course (comprehensive final examination).

(C) Question difficulty. Course content mastery questions must be short answer, multiple choice, essay, or a combination of these forms, and of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The ADM may use either of the following options for students who fail an examination to show mastery of course content, but may not use both in the same ADM.

(A) Repeat the failed unit. If the student misses more than 30 percent of the questions asked on an examination, the ADM must require that the student take the unit again. All timers must be reset. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the unit, the ADM must again test the student's mastery of the material. The ADM must present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the student. If the student misses more than 30 percent of the questions asked on an examination, the ADM must retest the student in the same manner as the failed examination, using different questions from its test bank. The student is not required to repeat the failed unit but may be allowed to do so prior to retaking the examination. If the student fails the same unit examination or the comprehensive final examination three times, the student fails the course.

(f) Student records. The ADM must provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. Each entry that verifies enrollment, identifies the question asked or the response given, documents retesting and/or revalidation, and documents any changes to the student's record must include the date and time of the activity reported. The student records must contain the following information.

(1) The student's name and driver's license number.

(2) A record of which personal validation questions were asked and the student's responses.

(3) A record of which multimedia participation questions were asked and the student's responses.

(4) The name or identity number of the staff member entering comments, retesting, or revalidating the student.

(5) If any answer to a question is changed by the driving safety provider for a student who inadvertently missed a question, the provider must provide both answers and a reasonable explanation for the change.

(6) A record of the course content mastery questions asked and the answers given.

(7) A record of the time the student spent in each unit of the ADM and the total instructional time the student spent in the course.

(8) The provider must also ensure that the student record is readily, securely, and reliably available for inspection by the department.

(g) Additional requirements for ADM courses. Courses delivered via the Internet must also comply with the following requirements.

(1) Course identification. All ADM courses must display the driving safety provider name and license number assigned by the department on the entity's website and the registration page used by the student to pay any monies, provide any personal information, and enroll.

(2) A driving safety provider offering a driving safety course through ADM may accept students redirected from another website if the student is redirected to the webpage that clearly identifies the names and license numbers of the provider offering the ADM. This information must be visible before and during the student registration and course payment processes.

(3) Domain names. Each provider offering a driving safety course through ADM must offer that ADM from a single domain.

(h) Additional requirements for video courses.

(1) Delivery of the material. For ADMs delivered using videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a department approved process.

(2) Video requirement. In order to meet the video requirement of §84.504(a)(1)(B)(v), the video course must include between 60 and 150 minutes of multimedia that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 300 minutes of required instruction must be video material that is relevant to the required topics and produced specifically for the ADM.

(A) A video ADM must ask at least one course validation question for each multimedia clip of more than 180 seconds at the end of each major segment (chapter) of the ADM.

(B) A video ADM must devise and submit for approval a method for ensuring that a student correctly answers questions concerning multimedia clips consisting of more than 60 seconds in length presented during the ADM.

(i) Standards for ADMs using new technology. For ADMs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards must be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(j) Modifications to the ADM. A change to a previously approved ADM may be made without the prior approval of the department. The driving safety provider must notify the department of the modification not later than 30 days after its occurrence.

(k) Termination of the driving safety provider's operation. Upon termination, a driving safety provider must deliver any missing student data to the department within five days of termination.

(l) Access to the driving safety provider for technical assistance. The driving safety provider must establish hours that the student may obtain technical assistance. Except for circumstances beyond the control of the provider, the student must have access to the provider and technical assistance during the specified hours.

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 August 19, 2024.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7750

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SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapter 51, and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021).

§84.600. Program of Organized Instruction.

(a) To be approved under this subchapter, a driver education plan must include one or more of the following course programs.

(1) Core program. This program must consist of at least 24 [~~32~~] hours of classroom instruction; seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice [~~instruction~~], including at least 10 hours of instruction that takes place at night, certified [~~verified~~] by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(2) In-car only program. This program must consist of at least seven hours of behind-the-wheel instruction in the presence of a certified instructor; seven hours of in-car observation in the presence of a certified instructor; and 30 hours of behind-the-wheel supervised practice [~~instruction~~], including at least 10 hours of instruction that takes place at night, certified [~~verified~~] by a parent or guardian in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(3) Classroom only program. This program must consist of at least 24 [~~32~~] hours of classroom instruction.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all minor and adult driver education programs.

(1) A learner portion of a DE-964 must be issued to a student to obtain a learner's license upon completion of Module One of the POI-DE. A driver license portion of the DE-964 must be given when all in-car laboratory and classroom instruction has been completed by the student.

(2) In-car laboratory lessons may be given only after the student has obtained a learner's license.

(3) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(4) Instruction must not be scheduled before 5:00 a.m. or after 11:00 p.m.

(5) The driver education classroom phase must have uniform beginning and ending dates. Students must proceed in a uniform sequence. Students must be enrolled and in class before the fifth [~~seventh~~] hour of classroom instruction in a 24 [~~32~~]-hour program and the 12th hour of classroom instruction in 56-hour or semester-length programs.

(6) Self-study assignments occurring during regularly scheduled class periods must not exceed 25 percent of the course and must be presented to the entire class simultaneously.

(7) The driver education course must be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This must not circumvent attendance or progress. Variances to the established timelines must be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(8) Public schools [~~Schools~~] are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(9) Driver education training offered by the public school must not exceed six hours per day. Public schools may include five minutes of break per instructional hour as identified in §84.500 (relating to Courses of Instruction for Driver Education Providers). In-car instruction provided by the public school must not exceed four hours per day as follows:

(A) four hours or less of in-car training; however, behind-the-wheel instruction must not exceed two hours per day; or

(B) four hours or less of simulation instruction; or

(C) four hours or less of multicar range instruction; or

(D) any combination of the methods delineated in this subsection that does not exceed four hours per day.

[~~(9) A student must not receive credit for more than four hours of driver education training at a public school in one calendar day no matter what combination of training is provided, excluding makeup. Further, for each calendar day, a student is limited to a maximum of:~~]

[~~(A) two hours of classroom instruction;~~]

[~~(B) four hours of observation time;~~]

[~~(C) two hours of multicar range driving;~~]

[~~(D) three hours of simulation instruction; and~~]

[~~(E) one hour of behind-the-wheel instruction.~~]

(10) Driver education training certified [~~verified~~] by the parent is limited to two hours [~~one hour~~] per day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range must include the instructional objectives established by the department, as specified in this subsection and the POI-DE, and meet the requirements of this subchapter. Sample instructional modules may be obtained from the department. Schools may use sample instructional modules developed by the department or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the modules outlined in this subsection and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives that must be provided to every student enrolled in a minor and adult driver education course include information relating to litter prevention; anatomical gifts; safely operating a vehicle near oversize or overweight vehicles; distractions, including the use of a wireless communication device that includes texting; motorcycle awareness; alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle; and recreational water safety. A student may apply to the Texas Department of Public Safety (DPS) for a learner's license after completing four [~~six~~] hours of instruction as specified in Module One of the POI-DE.

(d) A public school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the instructional programs, and each plan for a multicar driving range must meet state specifications developed by the department. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from the department.

(f) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel and one hour observation instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind-the-wheel and one hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, excluding makeup students.

(h) All behind-the-wheel lessons must consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., must not be counted for behind-the-wheel instruction. The instructor must be in the vehicle with the student during the entire time behind-the-wheel instruction is provided.

(i) Minor and adult driver education programs must include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a minor and adult driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these must not exceed 720 [~~640~~] minutes of the total classroom phase.

(3) Each classroom student must be provided a driver education textbook or driver education instructional materials approved by the department.

(4) A copy of the current edition of the "Texas Driver Handbook" or equivalent study material [~~published by DPS~~] must be made available [~~furnished~~] to each student enrolled in the classroom phase of the driver education course.

(5) No public school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for makeup lessons, or if a hardship would result if scheduled instruction were [~~is~~] not provided. In each case when only one student is instructed:

(A) the school must obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver must specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver must be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Colleges and universities that offer driver education to adults must submit and receive written approval for the course from the department prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

§84.601. Additional Procedures for Student Certification and Transfers.

(a) Unused DE-964s must not be transferred to another school without written approval by the department.

(b) The DE-964 document is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the form as to the prerequisite set forth may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(c) The superintendent, college or university chief school official, ESC director, or their designee may request to receive serially numbered DE-964 certificates for exempt schools by submitting a completed order on the form provided by the department stating the number of certificates to be purchased and including payment of all appropriate fees. The department will accept purchase requisitions from school districts.

(d) All DE-964 certificates and records of certificates must be provided to the department or DPS upon request. The superintendent, college or university chief school official, ESC director, or their designee must maintain the school copies of the certificates. The chief school official, ESC or DPS director, or their designee must return unissued DE-964 certificates to the department within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(e) The public school may accept any part of the driver education instruction received by a student in another state; however, the student must complete all the course requirements for a Texas driver education program. Driver education instruction completed in another state must be certified in writing by the chief official or course instructor of the school where the instruction was given and include the hours and minutes of instruction and a complete description of each lesson provided. The certification document must be attached to the student's individual record at the Texas school and be maintained with the record for three [~~seven~~] years or as mandated by the school district.

(f) Students who are licensed in another state and have completed that state's driver education program should contact the DPS for information on the licensing reciprocal agreement between that state and Texas.

(g) All records of instruction must be included as part of the student's final history when it is necessary to compile multiple records to verify that a student successfully completed a driver education course.

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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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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CHAPTER 131. PROCEDURAL RULES DURING TEMPORARY ADMINISTRATION OF THE TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

16 TAC §§131.1, 131.11, 131.21, 131.23, 131.25, 131.27, 131.29

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC), Chapter 131, §§131.1, 131.11, 131.21, 131.23, 131.25, 131.27, and 131.29, regarding the Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 16 TAC, Chapter 131, will implement Texas Occupations Code, Chapter 801, Veterinarians, Subchapter A-1, Temporary Administration by the Texas Department of Licensing and Regulation.

On September 1, 2023, the Texas Board of Veterinary Medical Examiners (Board) was brought under the temporary administration of the Department by Senate Bill (SB) 1414, 88th Legislature, Regular Session (2023). As a result of SB 1414, the Texas Commission of Licensing and Regulation (Commission) now serves as the decision-maker in contested cases under Occupations Code, Chapter 801 (Veterinary Licensing Act or "the Act."). Occupations Code §801.022(a) and (b) vest the Department, during temporary administration, with most of the Board's former policymaking and decision-making authority under the Act, with the Board retaining rulemaking authority over standard of care and scope of practice matters, subject to limited oversight, under §801.024. Occupations Code §801.022(c) gives the Commission and Department discretion to delegate powers to the Board or its executive director, and to withdraw these delegations of power. Under Occupations Code §801.022(d), the Commission is required to adopt rules necessary to implement the temporary administration of the Board. Occupations Code §801.025 provides that in the event of a conflict between Occupations Code, Chapters 51 and 801, the latter prevails, and that the provisions of Subchapter A-1 prevail over the remainder of Chapter 801.

Prior to the effective date of SB 1414, contested cases under the Act were decided by the Board, applying the Act and the Board's procedural rules found in 22 TAC, Chapter 575, which implement the Act. Similarly, contested cases before the Commission are decided under the procedural rules at 16 TAC, Chapter 60, which implement Occupations Code, Chapter 51, the Department's enabling statute. Key differences exist between the Chapter 60 and Chapter 575 rules, introducing the possibility of confusion in conduct of contested veterinary licensing cases during the temporary administration. The proposed rules address these issues by resolving conflicts between the Chapter 60 and Chapter 575 rules as necessary to effect the temporary administration, while preserving the statutory rights of license holders and the statutory hierarchy set forth in Occupations Code §801.025.

The proposed rules clarify that unless the Commission delegates its authority to make decisions in contested cases under the Veterinary Licensing Act, the Commission will serve as the decision-maker in these matters. The Commission may delegate this authority to its own executive director, the Board, or the Board's executive director. Further, the proposed rules provide detail regarding the Board's, Department's, and Commission's roles in the contested case process, and the procedures to be followed if the Commission does not delegate its decision-making power. Further, the proposed rules address conflicts between the Board's existing rules and the Commission's rules relating to interim and interlocutory appeals, as well as deadlines for exceptions and replies in cases before the State Office of Administrative Hearings.

SECTION-BY-SECTION SUMMARY

The proposed rules add new 16 TAC, Chapter 131, Procedural Rules During Temporary Administration of the Texas Board of Veterinary Medical Examiners.

The proposed rules add new §131.1, Authority and Applicability. Subsection (a) sets forth the legal authority for the rule chapter. Subsection (b) sets forth the circumstances under which the rules apply. Subsection (c) sets forth a framework for resolving any conflicts between this chapter, the Chapter 60 rules, and the Chapter 575 rules, as enumerated in paragraphs (1) - (3).

The proposed rules add new §131.11, Definitions. Subsection (a) incorporates by reference the definitions in the Act, the APA, and in 16 TAC §60.10. Subsection (b) provides specific definitions in paragraph (1) - (9) for certain key terms, doing so for clarity and ease of reference.

The proposed rules add new §131.21, Contested Case Proceedings at SOAH. The rule mirrors language in 16 TAC §60.305(a) and clarifies that the period for exceptions and replies is determined under the APA and SOAH's procedural rules, rather than under 22 TAC §575.6.

The proposed rules add new §131.23, Interlocutory or Interim Appeals. The rule clarifies that, notwithstanding the rule at 22 TAC §575.30(f), which purports to permit interlocutory or interim appeals, such a proceeding is not available during the temporary administration.

The proposed rules add new §131.25, Commission and Board Consideration of Proposals for Decision. The rule clarifies that the Board acts in an advisory capacity and that the Commission is the decision-maker following the issuance of a proposal for decision. Subsection (a) sets forth the Commission's status as decision-maker and its authority to delegate this power to the Board on a revocable basis, as provided in Occupations Code §801.022(c). Subsection (b) provides that the Board is to consider the proposal for decision at an open meeting in accordance with its procedural rules, is to make a written recommendation to the Commission, and will notify the parties of its recommendation by mail or email. Subsection (b) provides that no motion for rehearing or reconsideration is to be filed at the Board level. Subsection (c) outlines the procedures for Commission consideration of the Board's recommendation. Subsection (d) addresses the content of oral argument, where permitted, and prohibits the

consideration of new evidence presented during oral arguments, tracking certain language from 16 TAC §60.308(b). Subsection (e) provides the factors that will be considered by the Commission in determining the appropriate disciplinary action for a violation.

The proposed rules add new §131.27, Motions for Rehearing. The rule tracks the language of 16 TAC §60.309, clarifying that the Commission's procedures for motions for rehearing apply to cases under the Act.

The proposed rules add new §131.29, Proceedings for the Modification or Termination of Agreed Orders and Disciplinary Orders. The rule clarifies that the Commission is the decision-maker over proceedings to modify or terminate a previously imposed sanction. Subsection (a) clarifies that the rule does not create a new right to relief. Subsection (b) provides that the Commission is the decision-maker unless this power is delegated, and that the terms of a delegation order override any conflicting provision in this rule section. Subsection (c) provides that the Board is to consider and make recommendations on motions to modify or terminate a sanction. Subsection (d) provides that the Commission will rule on the motion after considering the Board's recommendation.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be an improved understanding by the public, license holders, the Board, and Department, of their rights and responsibilities with respect to the contested case process during the Department's temporary administration of the Board.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules create a new regulation. The proposed rules add procedural rules for the handling and consideration of contested cases involving individuals licensed under the Act during temporary administration.

6. The proposed rules do not expand, limit, or repeal an existing regulation.

7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules establish procedural rules affecting any individual licensed under the Act who is or becomes a party to a contested case during temporary administration.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at *TBVME.Comments@tdlr.texas.gov;* by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register,*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code §801.022, which authorizes the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, to adopt rules as necessary to effect the De-

partment's temporary administration of the board in accordance with Occupations Code, Chapter 801, subchapter A-1.

The proposed rules are also proposed under Texas Occupations Code, Chapter 51, which authorize the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 801. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is Senate Bill 1414, 88th Legislature, Regular Session (2023).

§131.1. Authority and Applicability.

(a) Authority. This chapter is adopted under the authority of Texas Occupations Code, Chapters 51 and 801.

(b) Applicability. This chapter prescribes procedural rules during the department's temporary administration of the board.

(c) Conflicts. In the event of a conflict between this chapter, the rules of the board under 22 TAC Chapter 575, and the rules of the department under 16 TAC, Chapter 60:

(1) This chapter prevails over any conflicting provision in Chapter 575 or Chapter 60;

(2) Unless otherwise specified in law, where there is no applicable provision in this chapter, the provisions of Chapter 575 prevail over a conflicting provision of Chapter 60; and

(3) Where there is no applicable provision in either this chapter or Chapter 575, the provisions of Chapter 60 prevail.

§131.11. Definitions.

(a) Where applicable, the definitions contained in Texas Occupations Code Chapter 801, Texas Government Code Chapter 2001, and 16 TAC §60.10 are incorporated into this chapter.

(b) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Board - The Texas Board of Veterinary Medical Examiners.

(2) Commission - The Texas Commission of Licensing and Regulation.

(3) Department - The Texas Department of Licensing and Regulation.

(4) Executive Director - The head administrative official of the department or board, as specified.

(5) License - A license, certificate, registration, title, commission, or permit issued by the department or board.

(6) License holder - A person who holds a license issued by the department or board.

(7) Party - A person or state agency named or admitted as a party to participate in a contested case.

(8) Sanction - An action against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, the placement of a license holder on probation, or refusal to renew.

(9) Veterinary Licensing Act - Texas Occupations Code, Chapter 801.

§131.21. Contested Case Proceedings at SOAH.

Contested case hearings at SOAH, including the period for exceptions and replies, are governed by Texas Government Code, Chapter 2001 and the SOAH rules under 1 TAC Chapter 155.

§131.23. Interlocutory or Interim Appeals.

Notwithstanding the provisions of 22 TAC §575.30(f), no interlocutory or interim appeals are permitted.

§131.25. Commission and Board Consideration of Contested Cases.

(a) Commission as decision-maker. The commission may delegate to the board, the executive director of the board, or the executive director of the department the authority to decide contested cases. Such delegation is revocable. Unless so delegated, the commission is the decision-maker of all contested cases under the Veterinary Licensing Act, and the provisions of this section will apply. Should the commission delegate authority to decide contested cases, the terms of the delegation will override any conflicting provision in this section.

(b) Board to make recommendation. Following the issuance of a proposal for decision, the board, in an open meeting and in accordance with its procedural rules, may permit the parties to present oral arguments. The board will make a written recommendation to the commission on the resolution of the case, and will notify the parties or their representatives of its recommendation by postal or electronic mail. The board's recommendation is not binding on the commission. No motion for rehearing or reconsideration may be considered by the board following its recommendation.

(c) Commission consideration of board's recommendation regarding proposals for decision. After receiving the board's recommendation relating to the adoption or modification of a proposal for decision, the Commission will consider the case in an open meeting unless it has delegated decision-making authority to the board. The commission may, in its sole discretion, hear oral argument in the matter.

(d) Oral argument. If oral argument is permitted at a board or commission meeting at which a contested case is considered, argument must be restricted to summation of testimony and evidence presented during the SOAH hearing or admitted into the SOAH record, including filings of the parties, exceptions, dispositions, and the responses, and suggested inferences from the evidentiary record. No new testimony, witnesses, or information may be considered.

(e) Sanctions. In determining the appropriate disciplinary action for a violation, the commission will consider the factors listed under §801.411(b) of the Veterinary Licensing Act and the schedule of sanctions provided under 22 TAC §575.25.

§131.27. Motions for Rehearing.

(a) The commission may delegate to the board the authority to accept and rule upon motions for rehearing. Unless so delegated, the commission will rule upon motions for rehearing and the provisions of this section will apply. Should the commission delegate this authority, the terms of the delegation will override any conflicting provision in this section.

(b) A motion for rehearing in a contested case under the Veterinary Licensing Act must be filed with the department and will be handled in accordance with Texas Government Code, Chapter 2001, Subchapter F, and 16 Texas Administrative Code §60.309.

(c) The commission may, in its sole discretion, hear oral argument on a motion for rehearing related to a contested case under the Veterinary Licensing Act.

§131.29. Proceedings for the Modification of Termination of Agreed Orders and Disciplinary Orders.

(a) No new right to relief created. This section governs proceedings to modify or terminate agreed orders and disciplinary orders where a right to seek such relief exists under current law and does not create a new right to such relief.

(b) Commission as decision-maker. The commission may delegate to the board or the executive director of the department the authority to rule upon motions to modify or terminate agreed orders or disciplinary orders. Such delegation is revocable. Unless so delegated, the commission will rule upon all such motions. Should the commission delegate this authority, the terms of the delegation will override any conflicting provision in this section.

(c) Board to issue recommendation. The board will receive and consider motions to modify or terminate agreed orders or disciplinary orders in accordance with the Veterinary Licensing Act and the board's procedural rules. Following board deliberation of the motion, the board will make a written recommendation to the commission on the resolution of the case and notify the parties or their representatives of its recommendation by postal or electronic mail.

(d) Following the issuance of the board's recommendation, the commission will rule upon the motion.

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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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 210. NON-TRANSPLANT ANATOMICAL DONATIONS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§210.1 - 210.3

The Texas Funeral Service Commission (Commission) proposes new rules to Texas Administrative Code (TAC), Title 22, Part 10, in new Chapter 210, Non-Transplant Anatomical Donations, and new Subchapter A, General Provisions, §§210.1 - 210.3, regarding the implementation of a donor acknowledgement form to be used by an adult of sound mind in Texas who is donating his or her body by will or other instrument to willed body programs and non-transplant anatomical donation organizations to be used for the advancement of medical or forensic science.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 22 TAC, Chapter 210, Subchapter A implement Texas Health and Safety Code Section 691.28, Donation of Body by Written Instrument.

The Texas Legislature amended Texas Health and Safety Code Section 691.28 to include a donor acknowledgment form as part of the informed consent requirements in order to make effective an adult's donation of his or her whole body to a university willed body program or a non-transplant anatomical donation organization to be used for the advancement of medical or forensic science. Section 691.28(b)(2) sets forth the elements that must be in the donor acknowledgment, and Section 691.28(b-1) requires the Commission, by rule, to design and adopt a form that complies with Section 691.28(b) that willed body programs and non-transplant anatomical donation organizations must use. These rules satisfy this statutory directive.

Specifically, the new proposed rules provide the following:

Proposed new §210.1 establishes definitions for certain terms that are used in the subchapter and the proposed form.

Proposed new §210.2 sets forth information that must be provided to a donor, potential donor, or authorized person for the donation of the decedent's body upon death for the advancement of medical and forensic science. The proposed rule requires such information to be provided verbally and in writing in clear and plain language. The proposed new rule requires the following information be provided to the potential donor: 1) the donee's required criteria to accept a whole body donation and possibility that the donation may not be accepted if those requirements are not met at the time of death; 2) any costs or duties to the donor or donor's family, next of kin, or other designee for transferring the decedent donor and associated costs if donor is not accepted by the willed body program or non-transplant anatomical donation organization; 3) the donor must complete and sign a separate Donor Acknowledgement Form if the donee willed body program or non-transplant anatomical organization wants to use the decedent's body for a special project that is beyond the general scope of medical/forensic science education, research or training or was not previously explained to the donor when they signed the original Donor Acknowledgement Form; 4) if applicable, that the donee may or will not use all of the whole body donation, and what happens with those parts of the donor's body not used; and 5) if photographs or videos are allowed, the purposes and length of time the photographs and videos will be used or maintained.

Proposed new §210.3 adopts the Commission prescribed Donor Acknowledgement Form that must be used by willed body programs and NADOs in order to use the decedent donor's body or body parts for the advancement of medical or forensic science if the decedent donated his or her body in a willed or written instrument. The proposed new rule further requires the elements that the donor acknowledgement form must include that are applicable to the particular willed body program and non-transplant anatomical donation organization.

Advisory Committee

State Anatomical Advisory Committee and stakeholder meetings were held on December 20, 2023 and January 17, 2024, to discuss the rules regarding the donor acknowledgment form and to implement Texas Health and Safety Code §§691.28(b)(2) and (b-1) requirements. Suggestions and comments made during those meetings are incorporated into the proposed rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Sarah Hartsfield, Interim Executive Director and Staff Attorney, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated reductions in

costs to state or local governments resulting from the enforcement or administration of the proposed rules. There are no foreseeable implications relating to the loss or increase of revenues to the state or local governments by enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The proposed rules will not affect the local economy. Therefore, the Commission is not required to prepare a local employment impact statement under §2001.22, Texas Government Code.

PUBLIC BENEFIT & Probable Economic Costs to Persons Required to Comply with Proposal

Sarah Hartsfield also determined that for each year of the first five-year period the proposed rules are in effect, the public benefit includes greater transparency to individuals who are potentially interested in donating their whole body for the advancement of medical or forensic science to a willed body program or non-transplant anatomical donation organization regarding how their whole body donation could be used, possible consequences of the whole body donation, and the final disposition of the individual's whole body donation after the willed body program or non-transplant donation organization is finished using the body for the advancement of medical or forensic science. This allows the individual to make an informed decision about his or her donation.

Another public benefit is that the proposed rules provide clarity to willed body programs and non-transplant anatomical donation organizations of the specific form that is required under Texas Health and Safety Code §§691.28(b)(2) and (b-1) to be provided to adults of sound mind who are donating their whole bodies for the advancement of medical or forensic science in a will or other written instrument.

Further, public benefit includes the creation of uniform standards for the completion of the donor acknowledgment form, as well as the manner and content of communications regarding the donor acknowledgement form between the willed body program or non-transplant anatomical donation organization and the potential adult donor.

The proposed rules have no significant economic costs to persons that are authorized or registered by the Commission under Texas Health and Safety Code Chapter 691, businesses, or the general public in Texas. The rules do not impose additional fees upon registered or authorized persons by the Commission. The requirements created by the proposed rules would not cause licensees to expend funds for equipment, technology, staff, supplies, or infrastructure. There may be costs associated with printing the donor acknowledgement form to provide to the potential adult donor, but such costs would be de minimis.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules have no anticipated adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, an economic impact statement is not required.

REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules are necessary to protect the health, safety, and welfare of residents in Texas, and, therefore, the Commission is not required to provide a statement under Texas Government Code §2001.45. Even if it was, the proposed rules do not have a fiscal note that imposes a cost on authorized or registered persons, including another state agency, a special district, or a local government. As a result, the Commission is not required to take any further action under §2001.45.

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 §2007.43.

Government Growth impact Statement

Pursuant to Government Code §2001.221, the Commission provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1) The proposed rules do not create or eliminate a government program.

2) Implementation of the proposed rules would not require the creation of new employee positions or the elimination of existing employee positions.

3) Implementation of the proposed rules would not require an increase or decrease in future legislative appropriations to the Commission.

4) The proposed rules do require an increase or decrease in fees paid to the Commission.

5) The proposed rules create a new regulation. As described previously, the proposed rules are required by Texas Health and Safety Code §691.28, which directs the Commission to "by rule . . . design and adopt a form" that complies with §§691.28(b) and (b-1) that "willed body programs and non-transplant anatomical donation organizations must use." The new regulations are created to comply with statutory mandate.

6) The proposed rule does not expand, limit, or repeal an existing regulation.

7) The proposed rule increases the number of individuals subject to the rule's applicability. During the 88th regular legislative session, the Texas Legislature passed Senate Bill 2040 (SB 2040), which abolished the Anatomical Board of the State of Texas, and transferred its duties, responsibilities, and jurisdiction to the Texas Funeral Service Code. Part of SB 2040 included amending Texas Health and Safety Code §691.28 to include new subsections (b)(2) and (b-1).

These subsections required a donor acknowledgement form must be provided to and signed by the adult donor acknowledging that he or she was informed about: 1) the consequences of the donation before providing consent that the donor's body would be used by the willed body program or non-transplant anatomical donation organization for the advancement of medical or forensic science; 2) the use the donee willed body program or non-transplant anatomical donation organization has for the donee's donated body parts; and 3) if applicable, any body part and the condition in which it will be returned to the person designated by the donor. The new statutory requirements went into effect on September 1, 2023.

When the new statute went into effect, it expanded the applicability of the number of individuals and entities subject to it and subsequently expanded the number of individuals and entities subject to the proposed rules which implement the new statute.

8) The proposed rule neither positively or adversely affects this state's economy.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Sarah Hartsfield, Interim Executive Director/Staff Attorney, by e-mail to legal@tfsc.texas.gov or by mail to Texas Funeral Service Commission, Attn: Sarah Hartsfield, 1801 Congress Avenue, Suite 11-800, Austin, Texas 78701. The deadline for comments is 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Health and Safety Code §691.22(c), which authorizes the Texas Funeral Service Commission to adopt rules, establish procedures, and prescribe forms necessary to administer and enforce Texas Health and Safety Code Chapter 691.

The proposed rules are also proposed pursuant to the authority set out in Texas Health and Safety Code §691.28(b-1) which mandates the Commission "by rule" to "design and adopt a form" that complies with the statutory requirements in Texas Health and Safety Code §691.28(b)(2) and (b-1) regarding the donor acknowledgment form content and design that willed body programs and non-transplant anatomical donation organizations must use before an adult donor may give informed consent for his or her whole body donation to be used for the advancement of medical or forensic science under Texas Health and Safety Code §691.28.

Cross Reference. The new section implements Texas Health and Safety Code, §691.028(b)(2) and (b-1), as amended by Senate Bill 2040, 88th Texas Legislature, Regular Session, 2023

§210.1 Definitions.

(a) "Authorized entity" means an entity or person authorized by the Commission to receive or use whole body or body part donations under Texas Health and Safety Code Chapter 691 for the advancement of medical, dental, and forensic science education, research, or training.

(b) "Body part" means anatomical specimen as defined in Texas Health and Safety Code, Section 691.1(3).

(c) "Commission" means the Texas Funeral Service Commission.

(d) "Designee" means an individual authorized under Chapter 691 or Chapter 692A, Texas Health and Safety Code to make a non-transplant donation of the decedent's whole body upon death for the advancement of medical or forensic science education, training, or research.

(e) "Donee" means a willed body program, NADO, or other donee authorized by the Commission that can receive a whole body donation directly from a donor to be used for the advancement of medical or forensic science.

(f) "NADO" means a non-transplant anatomical donation organization as defined in Texas Health and Safety Code Section 691.1(5).

(g) "Non-traditional facilities" means a location or facility that is not used for medical, health or science purposes in the ordinary course of business. This includes, but is not limited to, hotel ballrooms, convention centers, and similar entities.

(h) "Potential donor" means an individual who is considering donating his or her whole body or body part upon death under Texas Health and Safety Code Section 691.28 or a person authorized under Texas Health and Safety Code Section 692A.9 to donate a decedent's whole body or body part as a non-transplant anatomical gift to be used for the advancement of medical or forensic education, science, or research upon the decedent's death.

(i) "Traditional educational facilities" means classrooms, labs used for hands-on learning for medical, dental, or forensic science education or training, research labs, and other facilities located at a public, independent, or private university that is designed for medical, dental, health, and forensic science related education, training, and research.

(j) "Traditional medical facilities" means a location or facility that is designed and used for medical, dental, health, and forensic science purposes in its ordinary course of business. Traditional medical facilities may be at a brick-and-mortar location or a mobile unit. Such facilities include, but are not limited to, physician offices, hospitals, operating rooms, bioskills training facilities, and research labs.

(k) All other terms have the meanings assigned in Texas Health and Safety Code, Section 691.1 and Section 692A.2, unless otherwise stated.

§210.2 Information Provided to Potential Donor Prior to Making Whole Body Donation.

(a) In general, any information that is communicated to a donor, potential donor, or a statutorily authorized person to donate a decedent's body upon death, whether orally or in writing, must be in clear and plain language. Terms or phrases that are known primarily or used generally within the medical, health, or scientific field or professions, and not known or used by the general public, will not satisfy this requirement.

(b) All information in this section must be provided to the donor orally and in writing.

(c) The donee must provide the potential donor with the donee's required criteria in order to accept whole body donations, and the potential donor's body may not be accepted for donation if the eligibility requirements are not satisfied at the time of the potential donor's death.

(d) The donee must inform the potential donor regarding any costs or duties the potential donor's family, next of kin, or designated person would be responsible for regarding the transfer or donation of the donor's body or body parts, including alternative arrangements for the disposition of the donor's remains if the body is not accepted by the donee at the time of the donor's death.

(e) If a donor's body or body part may be used for a special project that is outside the general scope of medical or forensic science education, research, and training, or was not previously explained to the donor in the Donor Acknowledgment Form, the donee must provide a separate explanation to the donor or the donor's designee about the special project. Before the donor's death, the donee must have the donor complete and sign a separate Donor Acknowledgment Form for the special project.

(f) If the donee may or will not use all of the whole body donation for advancing medical or forensic science education, research, and training, the donee must inform the potential donor of such, and what will happen with parts of the donor's body that are not used for education, research, or training purposes.

(g) If photographs or videos will be allowed of the potential donor's or decedent donor's body or body parts, the donee must inform the potential donor or designee of such, for what purposes the photographs or videos will be used, and the length of time the photographs or videos will be maintained.

§210.3 Donor Acknowledgement Form.

(a) Pursuant to Texas Health and Safety Code §691.28(b), in order for an adult's donation of his or her whole body to be effective,

at the time of donation, the adult must be provided with a Donor Acknowledgement Form by the willed body program or NADO seeking the donation.

(b) The Donor Acknowledgement Form published following this section is the form adopted by the Commission to comply with Texas Health and Safety Code §691.28(b).

(c) The Donor Acknowledgment Form must reflect the specific consequences of the whole body donation, uses of the donated whole body or body parts, and, if applicable, what body parts will be returned to the donor and the conditions that apply to the particular willed body program or NADO seeking the whole body donation from the donor.

Figure: 22 TAC §210.3(c)

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 August 12, 2024.

TRD-202403694

Sarah Hartsfield

Interim Executive Director/Staff Attorney

Texas Funeral Service Commission

Earliest possible date of adoption: September 29, 2024

For further information, please call: (512) 936-2474

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board or TSBPE) proposes amendment to the existing rule at 22 Texas Administrative Code (TAC), Chapter 361, §361.1(18), which concerns definitions and general provisions. The proposed amendment is referred to as the "proposed rule amendment."

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The Board, under its general rule-making authority in Section 1301.251(2) of the Texas Occupations Code initiated a rule amendment to expand the definition of direct supervision to include virtual, remote supervision under limited conditions.

The Board recognizes that technology with the capability to visually stream or project the job site in real-time, such as Facetime, Zoom, etc., may be successfully utilized to perform on-the-job oversight and direct supervision of apprentices and licensees in the field. It is believed that given the pandemic and related, necessary social-distancing practices, virtual supervision was utilized in the plumbing industry since 2020 as a matter of necessity.

The proposed rule amendment creates the option for a Responsible Master Plumber (RMP) to choose to use remote virtual, audio-visual, real-time supervision in certain conditions to directly supervise work done under their authority and responsibility. Section 361.1(18) of the rules defines "Direct Supervision." On-the-job oversight and supervision is amended to show that direct supervision may include remote virtual audio-visual, real-time communication for registrants and licensees with 4000 hours of documented work and who hold Residential Utilities Installer and Drain Cleaner registrations performing repair and/or replacement of existing fixtures, not involving gas appliances, on one and two family dwellings.

The proposed rule amendment does not create any affirmative duty on or regulation of registrants or licensees. The proposed amended rule does not alleviate the responsibility of the RMP from adequate supervision or from ensuring that work is performed to the standards of the applicable code. It is in the Responsible Master Plumber's discretion to utilize optional technology as they deem it appropriate given their job sites, staff, technological capacities. Should inspection or investigation be done on the job site, any present licensee or registrant must demonstrate that real-time, audio-visual communication is successful and effective.

SECTION BY SECTION SUMMARY

Section 361.1(18) Direct Supervision. On-the-job oversight and supervision is amended to show that direct supervision may include virtual audio-visual, real-time communication for registrants and licensees that hold at least 4000 hours of documented experience, a Residential Utilities Installer registration and a Drain Cleaner registration for performing repair and/or replacement of existing fixtures, not involving gas appliances, on one and two family dwellings.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director for the Board (Executive Director), has determined that for the first five-year period the proposed amended rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the proposed amended rule is in effect, there will be no foreseeable losses or increases in revenue for the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS

The Executive Director has determined that for each of the first five years the proposed amended rule is in effect, the public benefit anticipated as a result of enforcing or administering the proposed amended rule will be to have fewer regulatory barriers.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH THE RULE

The Executive Director has determined that for the first five years the proposed amended rule is in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed amended rule.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

Given that the proposed amended rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, proposal and adoption of the proposed amended rule is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amended rule is in effect, the Board has determined the following: (1) the proposed amended rule does not create or eliminate a government program; (2) implementation of the proposed amended rule does

not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed amended rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed amended rule does not require an increase or decrease in fees paid to the agency; (5) the proposed amended rule does not create a new regulation; (6) the proposed amended rule does not expand, limit, or repeal an existing regulation; (7) the proposed amended rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed amended rule does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

No local economies are substantially affected by the proposed amended rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESS, AND RURAL COMMUNITIES

The proposed amended rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed amended rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

There are no private real property interests affected by the proposed amended rule. As a result, preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

PUBLIC COMMENTS

Written comments regarding the proposed amended rule may be submitted by mail to Patricia Latombe at 929 East 41st Street, Austin, Texas 78765, or by email to rule.comment@tsbpe.texas.gov with the subject line "Rule Amendment." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Texas Occupations Code authorizes the Texas State Board of Plumbing Examiners to adopt rules as necessary to implement the Chapter. No other statutes or rules are affected by the proposal.

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

§361.1. Definitions.

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

(1) APA--The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) Adopted Plumbing Code--A plumbing code, including a fuel gas code adopted by the Board or a political subdivision, in compliance with §1301.255 and §1301.551 of the Plumbing License Law.

(3) Advisory Committee--A committee appointed by the presiding officer of the board created to assist the board in exercising its powers and duties.

(4) Appliance Connection--An appliance connection procedure using only a code-approved appliance connector that does not require cutting into or altering the existing plumbing system.

(5) Applicant--An individual seeking to obtain a license, registration or endorsement issued by the Board.

(6) Board--The Texas State Board of Plumbing Examiners.

(7) Board Member--An individual appointed by the governor and confirmed by the senate to serve on the Board.

(8) Building Sewer--The part of the sanitary drainage system outside of the building, which extends from the end of the building drain to a public sewer, private sewer, private sewage disposal system, or other point of sewage disposal.

(9) Certificate of Insurance--A form submitted to the Board certifying that the Responsible Master Plumber carries insurance coverage as specified in the Plumbing License Law and Board Rules.

(10) Chief Examiner--An employee of the Board who, under the direction of the Executive Director, coordinates and supervises the activities of the Board examinations and registrations.

(11) Cleanout--A fitting, other than a p-trap, approved by the adopted plumbing code and designed to be installed in a sanitary drainage system to allow easy access for cleaning the sanitary drainage system.

(12) Code-Approved Appliance Connector--A semi-rigid or flexible assembly of tube and fittings approved by the adopted plumbing code and designed for connecting an appliance to the existing plumbing system without cutting into or altering the existing plumbing system.

(13) Code-Approved Existing Opening--For the purposes of drain cleaning activities described in §1301.002(3) of the Plumbing License Law, a code-approved existing opening is any existing cleanout fitting, inlet of any p-trap or fixture, or vent terminating into the atmosphere that has been approved and installed in accordance with the adopted plumbing code.

(14) Complaint--A written complaint filed with the Board against a person whose activities are subject to the jurisdiction of the Board.

(15) Contested Case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for adjudicative hearing.

(16) Continuing Professional Education or CPE--Approved courses/programs required for a licensee or registrant.

(17) Director of Enforcement--An employee of the Board who meets the definition of "Field Representative" and, under the direction of the Executive Director, coordinates and supervises the activities of the Field Representatives.

(18) Direct Supervision--

(A) The on-the-job oversight and direction of a registered Plumber's Apprentice or licensee performing plumbing work by a licensed plumber who is fulfilling his or her responsibility to the client and employer by ensuring the following:

(i) that the plumbing materials for the job are properly prepared prior to assembly according to the material manufacturers

recommendations and the requirements of the adopted plumbing code; and

(ii) that the plumbing work for the job is properly installed to protect health and safety by meeting the requirements of the adopted plumbing code and all requirements of local and state ordinances, regulations and laws.

(iii) Direct supervision may include virtual audio-visual, real-time communication for repair and replacement of existing fixtures, not involving gas appliances, on one and two family dwellings performed only by licensees and registrants with:

(I) 4000 hours of documented experience;

(II) a current Residential Utilities Installer registration; and

(III) a current Drain Cleaner registration.

(B) The on-the-job oversight and direction by a licensed Plumbing Inspector of an individual training to qualify for the Plumbing Inspector Examination.

(C) For plumbing work performed only in the construction of a new one-family or two-family dwelling in an unincorporated area of the state, a Responsible Master Plumber is not required to provide for the continuous or uninterrupted on-the-job oversight of a Registered Plumber's Apprentice's work by a licensed plumber, however, the Responsible Master Plumber must:

(i) provide for the training and management of the Registered Plumber's Apprentice by a licensed plumber;

(ii) provide for the review and inspection of the Registered Plumber's Apprentice's work by a licensed plumber to ensure compliance with subparagraph (A)(i) and (ii) of this paragraph; and

(iii) upon request by the Board, provide the name and plumber's license number of the licensed plumber who is providing on-the-job training and management of the Registered Plumber's Apprentice and who is reviewing and inspecting the Registered Plumber's Apprentice's work on the job, or the name and plumber's license number of the licensed plumber who trained and managed the Registered Plumber's Apprentice and who reviewed and inspected the Registered Plumber's Apprentice's work on a job.

(19) Endorsement--A certification issued by the Board as an addition to a Master Plumber, Plumbing Inspector, or Journeyman Plumber License or a Plumber's Apprentice Registration, including a Drain Cleaner Registration, a Drain Cleaner-Restricted Registration, and a Residential Utilities Installer Registration.

(20) Executive Director--The executive director of the Texas State Board of Plumbing Examiners who is employed by the Board as the executive head of the agency.

(21) Field Representative--An employee of the Board who is:

(A) knowledgeable of the Plumbing License Law and of municipal ordinances related to plumbing;

(B) qualified by experience and training in good plumbing practice and compliance with the Plumbing License Law;

(C) designated by the Board to assist in the enforcement of the Plumbing License Law and Board rules;

(D) licensed by the Board as a plumber; and

(E) hired to:

(i) make on-site license and registration checks to determine compliance with the Plumbing License Law;

(ii) investigate complaints; and

(iii) assist municipal plumbing inspectors in cooperative enforcement of the Plumbing License Law.

(22) Journeyman Plumber--An individual licensed under the Plumbing License Law who has met the qualifications for registration as a Plumber's Apprentice or for licensure as a Tradesman Plumber-Limited, who has completed at least 8,000 hours working under the supervision of a Responsible Master Plumber, who supervises, engages in, or works at the actual installation, alteration, repair, service and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

(23) License--A license, registration, certification, or endorsement issued by the Board.

(24) Licensing and Registering--The process of granting, denying, renewing, reinstating, revoking, or suspending a license, registration or endorsement.

(25) Maintenance Man or Maintenance Engineer--An individual who:

(A) is an employee, and not an independent contractor or subcontractor;

(B) performs plumbing maintenance work incidental to and in connection with other employment-related duties; and

(C) does not engage in plumbing work for the general public.

(D) For the purposes of paragraph 25(B), "incidental to and in connection with" includes the repair, maintenance and replacement of existing potable water piping, existing sanitary waste and vent piping, existing plumbing fixtures and existing water heaters. It does not include cutting into fuel gas plumbing systems and the installation of gas fueled water heaters.

(E) An individual who erects, builds, or installs plumbing not already in existence may not be classified as a maintenance man or maintenance engineer. Plumbing work performed by a maintenance man or maintenance engineer is not exempt from state law and municipal rules and ordinances regarding plumbing codes, plumbing permits and plumbing inspections.

(26) Master Plumber--An individual licensed under the Plumbing License Law who is skilled in the design, planning, superintending, and the practical installation, repair, and service of plumbing, who is knowledgeable about the codes, ordinances, or rules and regulations governing those matters, who alone, or through an individual or individuals under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(27) Medical Gas Piping Installation Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install piping that is used solely to transport gases used for medical purposes including, but not limited to, oxygen, nitrous oxide, medical air, nitrogen, or medical vacuum.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect medical gas and vacuum system installations.

(28) Multipurpose Residential Fire Protection Sprinkler Specialist Endorsement--

(A) A certification entitling the holder of a Master or Journeyman Plumber License to install a multipurpose residential fire protection sprinkler system in a one or two family dwelling.

(B) A certification entitling the holder of a Plumbing Inspector License to inspect a multipurpose residential fire protection sprinkler system.

(29) Military service member--A person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(30) Military spouse--A person who is married to a military service member who is currently on active duty.

(31) Military veteran--A person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(32) One-Family Dwelling--A detached structure designed for the residence of a single family that does not have the characteristics of a multiple family dwelling, and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(33) Party--A person or state agency named or admitted as a party to a contested case.

(34) Paid Directly--As related to §1301.255(e) of the Plumbing License Law, "paid" and "directly" have the common meanings and "paid directly" means that compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(35) Person--An individual, partnership, corporation, limited liability company, association, governmental subdivision or public or private organization of any character other than an agency.

(36) Petitioner--A person requesting the Board to adopt, amend or repeal a rule pursuant to §2001.021 of the Texas Government Code and the Board Rules.

(37) Plumbing--

(A) All piping, fixtures, appurtenances, and appliances, including disposal systems, drain or waste pipes, multipurpose residential fire protection sprinkler systems or any combination of these that: supply, distribute, circulate, recirculate, drain, or eliminate water, gas, medical gasses and vacuum, liquids, and sewage for all personal or domestic purposes in and about buildings where persons live, work, or assemble; connect the building on its outside with the source of water, gas, or other liquid supply, or combinations of these, on the premises, or the water main on public property; and carry waste water or sewage from or within a building to the sewer service lateral on public property or the disposal or septic terminal that holds private or domestic sewage.

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid.

(38) Plumbing Company--A person who engages in the plumbing business.

(39) Plumbing Inspection--Any of the inspections required in the Plumbing License Law, including any check of multipurpose residential fire protection sprinkler systems, pipes, faucets, tanks, valves, water heaters, plumbing fixtures and appliances by and through which a supply of water, gas, medical gasses or vacuum, or sewage is used or carried that is performed on behalf of any political subdivision, public water supply, municipal utility district, town, city or municipality to ensure compliance with the adopted plumbing and gas codes and ordinances regulating plumbing.

(40) Plumbing Inspector--Any individual who is employed by a political subdivision or state agency, or who contracts as an independent contractor with a political subdivision or state agency, for the purpose of inspecting plumbing work and installations in connection with health and safety laws, ordinances, and plumbing and gas codes, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

(41) Plumbing License Law or PLL--Chapter 1301 of the Texas Occupations Code.

(42) Pocket Card--A card issued by the Board which:

(A) certifies that the holder has a Responsible Master Plumber License, Master Plumber License, Journeyman Plumber License, Tradesman Plumber-Limited License, Plumbing Inspector License, or a Plumber's Apprentice Registration; and

(B) lists any Endorsements obtained by the holder.

(43) Political Subdivision--A political subdivision of the State of Texas that includes a:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) municipal utility district;

(F) levee improvement district;

(G) drainage district;

(H) irrigation district;

(I) water improvement district;

(J) water control improvement district;

(K) water control preservation district;

(L) freshwater supply district;

(M) navigation district;

(N) conservation and reclamation district;

(O) soil conservation district;

(P) communication district;

(Q) public health district;

(R) river authority; and

(S) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(44) P-Trap--A fitting connected to the sanitary drainage system for the purpose of preventing the escape of sewer gasses from the sanitary drainage system and designed to be removed to allow for cleaning of the sanitary drainage system. For the purposes of drain cleaning activities described in §1301.002(2) of the Plumbing License Law, a p-trap includes any integral trap of a water closet, bidet, or urinal.

(45) Public Water System--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals, but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or greater, at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if the individual lives in, uses as the individual's place of employment, or works in a place to which drinking water is supplied from the water system.

(46) Respondent--A person charged in a complaint filed with the Board.

(47) Responsible Master Plumber or RMP--A licensed Master Plumber who:

(A) allows the person's Master Plumber License to be used by only one plumbing company for the purpose of offering and performing plumbing work;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license;

(D) has submitted a certificate of insurance as required by the Plumbing License Law and Board Rules; and

(E) When used in Board forms, applications or other communications by the Board, the abbreviation "RMP" shall mean Responsible Master Plumber.

(48) Registration--A document issued by the Board to certify that the named individual fulfilled the requirements of the PLL and Board Rules to register as a Plumber's Apprentice.

(49) Rule--An agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures.

(50) Supervision--The general oversight, direction and management of plumbing work and individuals performing plumbing work by a Responsible Master Plumber, or licensed plumber designated by the RMP.

(51) System--An interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could endanger public health if improperly installed.

(52) Tradesman Plumber-Limited Licensee--An individual who has completed at least 4,000 hours working under the direct supervision of a Journeyman or Master Plumber as a registered Plumber's Apprentice, who has passed the required examination and fulfilled the other requirements of the Board, or successfully completed a career and technology education program, who constructs, installs, changes, repairs, services, or renovates plumbing for one-family or two-family dwellings under the supervision of a Responsible Master Plumber, and who has not met or attempted to meet the qualifications for a Journeyman Plumber License.

(53) Two-Family Dwelling--A detached structure with separate means of egress designed for the residence of two families ("duplex") that does not have the characteristics of a multiple family dwelling and is not primarily designed for transient guests or for providing services for rehabilitative, medical, or assisted living in connection with the occupancy of the structure.

(54) Water Supply Protection Specialist--A Master or Journeyman Plumber who holds the Water Supply Protection Specialist Endorsement issued by the Board to engage in customer service inspections, as defined by rule of the Texas Commission on Environmental Quality, and the installation, service, and repair of plumbing associated with the treatment, use, and distribution of rainwater to supply a plumbing fixture or appliance.

(55) Water Treatment--A business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting.

(56) Yard Water Service Piping--The building supply piping carrying potable water from the water meter or other source of water supply to the point of connection to the water distribution system at the building.

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-202403781
Patricia Latombe
General Counsel
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 936-5216

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 350. TEXAS RISK REDUCTION PROGRAM

SUBCHAPTER D. DEVELOPMENT OF PROTECTIVE CONCENTRATION LEVELS

30 TAC §350.76

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §350.76, concerning Approaches for Specific Chemicals of Concern to Determine Human Health Protective Concentration Levels.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend 30 Texas Administrative Code (TAC) Chapter 350, Texas Risk Reduction Program (TRRP) rule §350.76, pertaining to the chemical-specific approaches used for developing and demonstrating attainment of the critical human health protective concentration levels (PCLs) for dioxins/furans and dioxin-like polychlorinated biphenyls (PCBs).

The TCEQ proposes to update the approach for developing soil PCLs for dioxins/furans and dioxin-like PCBs used for residential and commercial/industrial land use under TRRP. The current approach is covered in the TRRP rule in §350.76(d) and §350.76(e), and the current PCLs are specified in the TRRP rule at §350.76(e)(3). The PCLs contained in the existing TRRP rule were based on a then-current 1998 United States Environmental Protection Agency (EPA) policy memo (OSWER Directive 9200.4-26), which described an approach for addressing dioxins in soil. Since that time, the EPA completed a reassessment of this approach and derived an updated reference dose for dioxins. Based on more recent scientific evaluations, the TCEQ can support the use of a reference dose in the range of EPA's updated value, and that value will be reflected in the approach provided in this proposed rule revision. Upon the effective date of the adopted revisions, any activity conducted pursuant to TRRP must comply with the revised approach for developing dioxins/furans and dioxin-like PCBs and the soil PCLs used for residential and commercial/industrial land use under TRRP.

Additionally, the proposed rule revision updates the toxicity equivalency factors (TEFs) related to dioxins/furans and dioxin-like PCBs contained in §350.76(d)(2)(B). Dioxins/furans and dioxin-like PCBs are mixtures of chemical compounds (congeners) with different toxicities. TRRP §§350.76(d) and (e) use TEFs to assess the relative toxicity of the individual congeners compared to the toxicity of the most toxic congener, 2,3,7,8-tetrachlorodibenzodioxin (2,3,7,8-TCDD), within a mixture of dioxins/furans and dioxin-like PCBs. The TEFs are applied as a multiplier of the concentration of each measured congener to calculate a 2,3,7,8-TCDD toxicity equivalency quotient (TEQ) concentration. The resulting 2,3,7,8-TCDD TEQ concentrations for each congener are summed to derive a total 2,3,7,8-TCDD TEQ concentration for the entire mixture. The total 2,3,7,8-TCDD TEQ concentration is then compared to a 2,3,7,8-TCDD PCL to determine the nature and extent of contamination and whether a remedy is required. The TRRP rule provides specific TEFs for various dioxins/furans and dioxin-like PCB compounds and directs persons to use these TEF values when demonstrating attainment of the critical PCL.

When the TRRP rule was promulgated in 1999, the most recent TEF values established by the World Health Organization (WHO) in 1998 were listed in the rule. However, based on evolving science and current data, WHO updated the TEF values in 2005 and continues to develop the most current TEF values. EPA and other regulatory agencies have been using the 2005 WHO TEFs. The proposed TRRP §350.76 rule revision will allow cleanups being conducted under TRRP to adopt the 2005 WHO TEFs or more recent TEFs established by a scientifically valid source that have been reviewed and approved by the executive director. Upon the effective date of the adopted revisions, any activity conducted pursuant to TRRP must comply with the 2005 WHO TEFs, or more recent TEFs established by a scientifically valid source that have been reviewed and approved by the executive director, for dioxin-like PCBs and dioxins/furans.

The TRRP chemical-specific PCL approaches for dioxins/furans and dioxin-like PCBs need to be revised to reflect updated information on dioxin toxicity and address appropriate updates to the WHO TEFs for dioxins/furans and dioxin-like PCBs. Updating the rule will also provide TCEQ with the flexibility needed to evaluate and adopt more recent TEFs that have been derived since the TRRP rule was first adopted in 1999.

Section by Section Discussion

Subchapter D: Development of Protective Concentration Levels

The commission proposes to amend §350.76(d)(2)(B) by removing the figure and the directive for persons to use TEFs specified therein when determining a 2,3,7,8-TCDD TEQ for dioxin-like PCBs. The proposed rule would direct persons to apply the 2005 WHO TEFs, or more recent TEFs established by a scientifically valid source that have been reviewed and approved by the executive director, to the measured concentrations for each of the dioxin-like PCBs.

The commission proposes to add new subsection §350.76(d)(3). This subsection clarifies that a person may be required to evaluate the adequacy of a response action when the executive director determines that a substantial change in the TEFs alters the calculated TEQ in such a way that results in the actual toxicity of the dioxin-like PCB mixture not being protective of human health and the environment. The rule also specifies that it is possible that a person might not be required to conduct a response action in the case where a significant change in the TEFs affects the TEQ in such a way that reveals a response action is no longer warranted to protect human health and the environment. To maintain the numerical order of the rule, previous subsections (d)(3) and (d)(4) are being renumbered to (d)(4) and (d)(5), respectively.

The commission proposes to amend §350.76(e)(1) by removing the directive for persons to use TEFs specified in the figure included in subsection (d)(2)(B), when demonstrating attainment of the critical PCL for 2,3,7,8-TCDD. The proposed rule would direct persons to apply the 2005 WHO TEFs, or more recent TEFs established by a scientifically valid source that have been reviewed and approved by the executive director, to demonstrate attainment of the critical PCL for 2,3,7,8-TCDD.

The commission proposes to amend §350.76(e)(1)(B) to clarify that, when homologue-specific analytical data are available, persons shall apply the 2005 WHO TEFs or more recent TEFs established by a scientifically valid source that have been reviewed and approved by the executive director. Additionally, this subsection clarifies that if a homologue class has more than one TEF for different congeners, persons shall use the highest of the latest TEFs that have been reviewed and approved by the executive director for that congener class. Additionally, the proposed rule removes the language specifying that a TEF value of 0.5 be used for the pentachlorodibenzofuran homologue class.

The commission proposes to amend §350.76(e)(1)(C) to clarify that, when congener-specific analytical data are available, persons shall apply the 2005 WHO TEFs or more recent TEFs established by a scientifically valid source that have been reviewed and approved by the executive director.

The commission proposes to add new subsection §350.76(e)(1)(D). This subsection clarifies that a person may be required to evaluate the adequacy of a response action when the executive director determines that a substantial change in the TEFs alters the calculated TEQ in such a way that it results in the actual toxicity of the dioxin and furan mixture not being protective of human health and the environment. The rule also specifies that it is possible that a person might not be required to conduct a response action in the case where a significant change in the TEFs affects the TEQ in such a way that reveals a response action is no longer warranted to protect human health and the environment.

The commission proposes to amend §350.76(e)(3) by removing language that establishes the critical soil PCL for residential properties for all three tiers as 1 part per billion (ppb) and for commercial/industrial properties for all three tiers as 5 ppb. The proposed rule would specify that the critical soil PCLs for residential and commercial/industrial properties shall be calculated for a 2,3,7,8-TCDD TEQ according to the equations and rule provisions provided in §350.75.

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 TCEQ and potentially a local governmental entity as a result of administration or enforcement of the proposed rule. Implementation of amendments to the proposed rule in §350.76 are anticipated to result in increased costs for the assessment and remediation of a small number of sites whose remediation is managed and funded by TCEQ and/or a municipality. The rulemaking is not anticipated to result in fiscal implications for other state or local governmental entities.

Costs for sample collection, laboratory analysis, and data analysis are anticipated to increase for these sites when they are being assessed. Given that this rulemaking will result in lower assessment levels for dioxins/furans and dioxin-like PCBs in soil, an increased number of samples would need to be collected at sites to delineate the horizontal and vertical extent of contamination. Laboratory analysis costs for these parameters could also increase significantly because laboratories would be required to use analytical methods that can meet the required level of performance based on the lowered PCL. Costs for remediation are also anticipated to increase because greater volumes of soil may need to be remediated to the lower PCLs.

Costs cannot be estimated because they will vary depending on the extent of contamination that is found and the remedy (e.g., excavation, capping, in-situ treatment) that is implemented; however, it is anticipated that any cost increases can be addressed at current appropriation levels.

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 increased consistency with the latest science. Specifically, the critical soil PCLs for 2,3,7,8-TCDD and the approach for developing dioxin/furan and dioxin-like PCB soil PCLs would be implemented in a manner consistent with the latest scientific evaluations from EPA and other regulatory agencies.

This rulemaking is anticipated to result in increased costs for the assessment and remediation by responsible or other performing parties at a small number of sites. In addition, it is possible that closed sites may need to be revisited if a lower soil PCL was determined to be a substantial change in circumstance, or if risks of exposure to concentrations of dioxins/furans and dioxin-like PCBs above new soil PCLs needed to be addressed.

Costs for sample collection, laboratory analysis, and data analysis may increase for these sites when they are being assessed. Given that this rulemaking will result in lower assessment levels for dioxins/furans and dioxin-like PCBs in soil, an increased number of samples may need to be collected at sites to delineate the horizontal and vertical extent of contamination. Laboratory analysis costs for these parameters could also increase significantly because laboratories would be required to use analytical methods that can meet the required level of performance based on the lowered PCL. Costs for remediation may also increase as greater volumes of soil may need to be remediated because of the lower assessment levels and soil PCLs.

Costs cannot be estimated because they will vary depending on the extent of contamination that is found and the remedy (e.g., excavation, capping, in-situ treatment) that is implemented.

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

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225. The commission determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rule is to adjust TRRP §350.76 methods and measures related to dioxins/furans and dioxin-like PCBs to align with current accepted science. Specifically, the proposed rule would revise the dioxin/furan and dioxin-like PCB soil PCLs used for residential and commercial/industrial land use under TRRP and update TEFs related to dioxins/furans and dioxin-like PCBs contained in §350.76 in light of more recent scientific evaluation, evolving science, and current data. The proposed rule is not expected to 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. Instead, the proposed rule may affect the costs and timeliness of cleanups of those sites where dioxins/furans or dioxin-like PCBs are the subject of investigation or remediation pursuant to TRRP. The proposed amendments do not rise to the level of material, but instead are limited to incorporating modifications to the current regulatory framework based on current science and data regarding dioxins/furans and dioxin-like PCBs. Therefore, the proposed rulemaking does not meet the definition of 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 Texas Government Code, §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 Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law. Second, the rulemaking does not propose requirements that are more stringent than existing state laws. 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. Fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, sections of the TWC, Chapter 26, and Texas Health & Safety Code, Chapter 361, authorize this rulemaking, which are cited in the Statutory Authority.

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

Takings Impact Assessment

The commission evaluated the proposed rules and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to adjust TRRP §350.76 methods and measures related to dioxins/furans and dioxin-like PCBs to align with current accepted science. The proposed rules would substantially advance this stated purpose by revising the soil PCLs and updating the TEFs related to these constituents.

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 incorporate modifications to the current regulatory framework based on current science and data regarding dioxins/furans and dioxin-like PCBs.

Consistency with the Coastal Management Program

This rulemaking is not applicable to the Coastal Management Program.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on Monday, September 30, 2024, at 9 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.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, September 26, 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 Friday, September 27, 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_MzY3YmVhNjItZWIxOS00OWEyLWI5ZTgtZjYyY2NhNzcwNjg1%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 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, 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 2024-023-350-WS. The comment period opens on August 30, 2024, and closes at 11:59 p.m. on October 1, 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 Scott Settemeyer, Rule Project Manager, Remediation Division, (512) 239-3429.

Statutory Authority

The rule change is proposed under the authority of 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 approve all general policy of the commission by rule; TWC, §26.011, which authorizes the commission to administer the provisions of TWC, Chapter 26; TWC, §26.039, which states that activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventative measures which the commission may adopt or issue; TWC, §26.121, which prohibits persons from discharging wastes into or adjacent to any water in the state unless authorized to do so and prohibits persons from engaging in any other activity which causes pollution of any water in the state; TWC, §§26.262 and 26.264, which state it is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and authorizes the commission to issue rules to carry out the policy; TWC, §§26.341 and 26.345, which state it is the policy of this state to maintain and protect quality of groundwater and surface water resources from pollution from certain substances in underground and above-ground storage tanks and authorizes the commission to adopt rules to carry out the policy; TWC, §26.401, which states that it is the policy of this state that discharges of pollutants, disposal of wastes, or other activities subject to state regulation be conducted in a manner to maintain and not impair groundwater uses or pose a public health hazard, and that groundwater quality be restored if feasible; Texas Health & Safety Code (THSC), §§361.017 and 361.024, which establish the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all power necessary or convenient to carry out the responsibilities of that jurisdiction and authorizes the commission to adopt rules; and THSC, Chapter 361, Subchapter F, which authorizes the commission to identify, assess, and remediate facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The proposed rules implement TWC, Chapter 26, and THSC, Chapter 361.

§350.76. Approaches for Specific Chemicals of Concern to Determine Human Health Protective Concentration Levels.

(a) General.

(1) Due to the unique nature of the toxicity and/or exposure, the person shall use the COC-specific approaches described in this section for the following COCs:

(A) cadmium;

(B) lead;

(C) polychlorinated biphenyls;

(D) polychlorinated dibenzodioxins and dibenzofurans;

(E) polycyclic aromatic hydrocarbons; and

(F) total petroleum hydrocarbons.

(2) Except for the specific provisions contained in this section, the person shall establish RBELs and PCLs in accordance with the standard procedures outlined in the previous sections of this subchapter.

(3) This section addresses only those exposure pathways for which PCL equations are provided in this subchapter. When dealing with other exposure pathways as required in §350.71(c) of this title (relating to General Requirements), the executive director will specify how those pathways should be addressed for these COCs using the best available science.

(4) The person shall use the figures as required in subsections (b) - (g) of this section.

(b) Cadmium.

(1) In calculating residential soil PCLs that are protective for noncarcinogenic effects for all tiers, the person shall incorporate age-adjusted exposure assumptions for the soil ingestion, vegetable ingestion, and dermal soil exposure pathways. Accordingly, 30 years of cadmium exposure shall be partitioned into three specific exposure periods: <1 - 6 years, 6 - 18 years, and 18 - 30 years. Cadmium intake shall be calculated for each of these periods, based on the period-specific exposure assumptions. The soil PCL for cadmium shall be a function of the final integrated intake estimate, which shall be determined by time-weighting intake from each of the three exposure periods. The age-adjusted RBEL equations and default parameters to be used for cadmium are provided in the following figure. The soil PCL for cadmium shall be calculated by combining the pathway-specific PCLs as outlined in §350.75(i)(6) of this title (relating to Tiered Human Health Protective Concentration Level Evaluation).
Figure: 30 TAC §350.76(b)(1) (No change.)

(2) In calculating residential and commercial/industrial soil PCLs for all tiers, the person shall use the reference dose values for cadmium in food in evaluating exposures to cadmium through the soil ingestion, vegetable ingestion, and dermal soil exposure pathways.

(c) Lead.

(1) The Tier 1 residential soil PCL ($^{Tot}Soil_{Comb}$) for lead is 500 mg/kg.

(2) Subject to prior approval by the executive director, the person may use property-specific data in conjunction with a lead model approved by the executive director (e.g., EPA Integrated Exposure Uptake Biokinetic model for lead in children (version 1.0 from 2005)) to calculate a Tier 3 residential soil PCL ($^{Tot}Soil_{Comb}$) for lead. The person shall submit information to the executive director which demonstrates that variance from default model inputs is supported by property-specific information (e.g., data from a scientifically valid bioavailability

study using property-specific soils). Property-specific model input values must be approved by the executive director. Consistent with the development of residential RBELs for COCs without chemical-specific approaches in accordance with §350.74 of this title (Development of Risk-Based Exposure Limits), variance from certain model default exposure factors such as soil/dust ingestion rates and exposure frequency to less conservative (i.e., lower) numerical values shall not be allowed.

(3) The commercial/industrial soil PCL ($^{Tot}Soil_{Comb}$) is based only on the soil ingestion pathway ($^{Soil}Soil_{Ing}$). The person shall use the exposure algorithm and default exposure factors in the following figure for calculating the Tier 1 commercial/industrial $^{Soil}RBEL_{Ing}$ value.
Figure: 30 TAC §350.76(c)(3) (No change).

(4) The person may use a different exposure algorithm as presented in the following figure that considers soil and dust separately for calculating the Tier 2 and 3 commercial/industrial $^{Soil}Soil_{Ing}$ value in cases where the person has adequate direct measurement data on the concentrations of lead in both soil and dust at the affected property. In addition, in calculating Tier 2 or 3 $^{Soil}Soil_{Ing}$ values, the person may deviate from the default exposure factors as shown in the figure in paragraph (3) of this subsection and the following figure if property-specific or defensible alternative data (e.g., from open literature or privately funded studies) adequately support such an approach. The specific exposure factors for which the person may use property-specific or scientifically defensible alternative values are the following:
Figure: 30 TAC §350.76(c)(4) (No change.)

(A) individual geometric standard deviation (GSD_i);

(B) baseline blood lead (PbBO);

(C) absolute absorption fraction of lead in soil/dust (Afsd);

(D) absolute absorption fraction of lead in soil (AFs); and

(E) absolute absorption fraction of lead in dust (Afd).

(d) Polychlorinated Biphenyls.

(1) In calculating Tier 1 residential and commercial/industrial soil and groundwater PCLs, the person shall use the upper-reference point of the upper-bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) for the soil ingestion, dermal contact with soil, vegetable ingestion, and inhalation (both vapor and particulate phases) exposure pathways.

(2) For Tiers 2 and 3, the person may use alternative slope factors when the following conditions are met:

(A) The person may use the lower reference point of the upper bound slope factors (0.4 $(mg/kg\text{-}day)^{-1}$) to calculate an inhalation unit risk factor when evaluating inhalation exposures to volatilized polychlorinated biphenyls. The person must still use the upper reference point of the upper bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) to evaluate inhalation exposures to particulate phase polychlorinated biphenyls.

(B) The person may conduct congener or isomer analyses. The person may use the lowest reference point of the upper-bound slope factors (0.07 $(mg/kg\text{-}day)^{-1}$) for the soil ingestion, dermal contact with soil, and inhalation exposure pathways if congener or isomer analyses verify that congeners with more than four chlorines comprise less than one-half percent of total polychlorinated biphenyls in a given exposure medium. The upper reference point of the upper-bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) shall be used for all other exposure pathways regardless of the results of the congener- or isomer-specific analyses. If congener or isomer analyses indicate that congeners with more than four chlorines comprise greater than one-half percent of total polychlorinated biphenyls in a given exposure medium, then the person shall use the upper-reference point of the upper-bound slope factors (2 $(mg/kg\text{-}day)^{-1}$) for all pathways for that specific exposure medium. Further, when congener concentrations are available, the contribution of dioxin-like polychlorinated biphenyls to total dioxin equivalents shall be considered. The person shall determine the constituents considered to be dioxin-like polychlorinated biphenyls from the list established by the World Health Organization in 2005, or a more recent list of constituents established by a scientifically valid source that has been reviewed and approved by the executive director. The person shall apply the toxicity equivalency factors established by the World Health Organization in 2005, or more recent toxicity equivalency factors established by a scientifically valid source that have been reviewed and approved by the executive director, [~~specified in the following figure~~] to the measured concentrations for each of the dioxin-like polychlorinated biphenyls. These values shall then be summed to obtain a 2,3,7,8-TCDD toxicity equivalency quotient. Toxicity equivalency quotients for dioxin-like polychlorinated biphenyls shall then be added to those for other dioxin-like compounds as specified in subsection (e) of this section to yield a total toxicity equivalency quotient concentration. This total toxicity equivalency [~~quotients~~] quotient concentration shall then be compared with the critical PCL for TCDD, 2,3,7,8-(dioxin). When addressing dioxin-like polychlorinated biphenyls in this manner, the person shall subtract the concentration of dioxin-like polychlorinated biphenyls from the total polychlorinated biphenyls concentration to avoid overestimating dioxin-like polychlorinated biphenyls by evaluating them twice.
[~~Figure: 30 TAC §350.76(d)(2)(B)~~]

(3) The executive director may determine that a change in a toxicity equivalency factor has been of such magnitude that the calculated toxicity equivalency quotient would not be representative of the actual toxicity of the dioxin-like polychlorinated biphenyl mixture and not protective of human health and the environment. If the executive director makes such a determination, then the person must evaluate the adequacy of the response action. If the executive director determines that a change in a toxicity equivalency factor is of such magnitude that the calculated toxicity equivalency quotient would not be representative of the actual toxicity of the dioxin-like polychlorinated biphenyl mixture such that the proposed response action is no longer warranted to protect human health and the environment, then a response action based on the previous toxicity equivalency quotient shall no longer be required.

(4) [~~(3)~~] In evaluating inhalation exposures under Tiers 2 or 3, the person shall convert the appropriate slope factor to an inhalation unit risk factor, based on the following equation: Inhalation Unit Risk Factor (risk per $\mu g/m^3$)= oral slope factor x 20 m^3/day divided by 70 kg x 10^{-3}mg/µg.

(5) [~~(4)~~] In Tiers 2 and 3, and only when applicable for a specific site, the person may set soil PCLs based on the requirements of the Toxic Substances Control Act, 40 Code of Federal Regulations Parts 750 and 761, as amended. Sites must comply fully with all applicable Toxic Substances Control Act, as amended, requirements when establishing the soil PCL for polychlorinated biphenyls in this manner.

(e) Polychlorinated Dibenzo-p-Dioxins and Dibenzofurans.

(1) In demonstrating attainment of the critical PCL for TCDD, 2,3,7,8-(dioxin), the person shall determine the constituents considered to be dioxins and furans from the list established by the World Health Organization in 2005, or a more recent list of constituents established by a scientifically valid source that has been reviewed and approved by the executive director. The person shall apply the toxicity equivalency factors established by the World Health Organization in 2005, or more recent toxicity equivalency factors established by a scientifically valid source that have been reviewed and approved

by the executive director [~~factor directorship shown in the figure in subsection (d)(2)(B) of this section~~] to the measured concentrations of the dioxins and furans in accordance with the following procedures.

(A) When analytical data are only available for total dioxins/furans, the person shall assume that the mixture consists solely of 2,3,7,8-TCDD, and a toxicity equivalency factor value of 1.0 shall be applied to the measured concentration to yield the 2,3,7,8-TCDD toxicity equivalency quotient concentration for the sample.

(B) When homologue-specific analytical data are available (e.g., tetrachlorodibenzodioxins), the person shall assume that each homologue class is comprised solely of 2,3,7,8-substituted congeners, and shall apply the toxicity equivalency factors established by the World Health Organization in 2005, or more recent toxicity equivalency factors established by a scientifically valid source that have been reviewed and approved by the executive director, [~~specified for the 2, 3, 7, 8-substituted congeners in the homologue class shall be applied~~] to the measured concentrations for that homologue class. If a homologue class has more than one toxicity equivalency factor for different congeners, the highest toxicity equivalency factor that has been reviewed and approved by the executive director shall be used for that congener class. [~~A toxicity equivalency factor value of 0.5 should be used for the pentachlorodibenzofuran homologue class.~~] The toxicity equivalency quotient concentrations for each homologue class shall be summed to obtain a total toxicity equivalency quotient concentration for the sample.

(C) When congener-specific analytical data are available (e.g., 1, 2, 3, 4, 7, 8-hexachlorodibenzofuran), the person shall determine the constituents considered to be dioxins and furans from the list established by the World Health Organization in 2005, or a more recent list of constituents established by a scientifically valid source that has been reviewed and approved by the executive director. The person shall apply the toxicity equivalency factors established by the World Health Organization in 2005, or more recent toxicity equivalency factors established by a scientifically valid source that have been reviewed and approved by the executive director [~~factor~~] for the 2, 3, 7, 8-substituted congeners, to the measured concentrations. The toxicity equivalency quotient concentrations for each 2, 3, 7, 8-substituted congener shall then be summed to obtain a total toxicity equivalency quotient concentration for the sample.

(D) The executive director may determine that a change in a toxicity equivalency factor has been of such magnitude that the calculated toxicity equivalency quotient would not be representative of the actual toxicity of the dioxin and furan mixture and not protective of human health and the environment. If the executive director makes such a determination, the person must evaluate the adequacy of the response action. If the executive director determines that a change in a toxicity equivalency factor is of such magnitude that the calculated toxicity equivalency quotient would not be representative of the actual toxicity of the dioxin and furan mixture such that the proposed response action is no longer warranted to protect human health and the environment, then a response action based on the previous toxicity equivalency quotient shall no longer be required.

(2) The person shall then compare the total toxicity equivalency quotient concentration established in paragraph (1) of this subsection to the critical PCL for TCDD, 2, 3, 7, 8-(dioxins).

(3) The person shall calculate [~~The~~] the critical soil PCLs [~~PCL~~] for residential and commercial/industrial properties for a 2,3,7,8-TCDD toxicity equivalency quotient according to the equations and rule provisions provided in §350.75 of this title (relating to Tiered Human Health Protective Concentration Level Evaluation). [~~for all three tiers is 1 part per billion (ppb) and for commercial/industrial properties for all three tiers is 5 ppb.~~]

(f) Polycyclic Aromatic Hydrocarbons.

(1) In calculating residential and commercial/industrial PCLs for all tiers, the person shall evaluate the following seven polycyclic aromatic hydrocarbons as carcinogens:

(A) benzo {a} anthracene;

(B) benzo {b} fluoranthene;

(C) benzo {k} fluoranthene;

(D) benzo {a} pyrene (B {a} P);

(E) chrysene;

(F) dibenzo {a, h} anthracene; and

(G) indeno {1, 2, 3-c, d} pyrene.

(2) The person shall use the relative potency factors outlined in the following figure to estimate cancer slope factors and unit risk estimates for each of the polycyclic aromatic hydrocarbons identified in paragraph (1) of this subsection for all exposure pathways (e.g., the soil ingestion, vegetable ingestion, inhalation, dermal contact with soil, and groundwater ingestion (in the absence of a primary MCL) exposure pathways):
Figure: 30 TAC §350.76(f)(2) (No change.)

(3) The cancer slope factors and inhalation unit risk factors for the seven carcinogenic polycyclic aromatic hydrocarbons, shall be calculated according to the equations set forth in the following figure:
Figure: 30 TAC §350.76(f)(3) (No change.)

(4) The person shall not apply the relative potency factor for any pathways when evaluating noncarcinogenic endpoints.

(5) For class 1 or 2 groundwater, the person shall establish PCLs according to the procedures in subparagraphs (A) and (B) of this paragraph.

(A) In evaluating residential and commercial/industrial exposures to class 1 and 2 groundwater for all tiers, the person shall use the most currently available primary MCL for benzo{a}pyrene as ${}^{GW}GW_{Ing}$ for benzo{a}pyrene.

(B) In establishing ${}^{GW}GW_{Ing}$ for class 1 and 2 groundwater for the six remaining carcinogenic polycyclic aromatic hydrocarbons, the person shall use the higher of the calculated ${}^{GW}RBEL_{Ing}$ or the primary MCL for B{a}P as ${}^{GW}GW_{Ing}$ for that specific polycyclic aromatic hydrocarbon. In the event that primary MCLs for the other carcinogenic polycyclic aromatic hydrocarbons become available, those MCLs would serve as ${}^{GW}GW_{Ing}$ for these compounds.

(g) Total Petroleum Hydrocarbons.

(1) The person shall follow the methodology prescribed by this subsection to establish PCLs for total petroleum hydrocarbons, unless the executive director approves the use of an alternate method.

(2) In order to establish PCLs for total petroleum hydrocarbons, the person shall establish PCLs for each of the aliphatic and aromatic hydrocarbon fractions listed in the following figure (e.g., aliphatic $>C_6$ -C_8) for the mandatory and complete or reasonably anticipated to be completed exposure pathways as required in §350.71(c) of this title (relating to General Requirements):
Figure: 30 TAC §350.76(g)(2) (No change.)

(3) The person shall use the specific toxicity factors for the specific surrogates as shown in the figure in paragraph (2) of this subsection for a hydrocarbon fraction. If a reference concentration is

not available, then the person shall not be required to comply with §350.73(c) of this title (relating to Determination and Use of Human Toxicity Factors and Chemical Properties). The PCLs established under this subsection shall be based on noncarcinogenic effects.

(4) The person shall ensure that the PCLs established for each hydrocarbon fraction comply with the hazard quotient criteria as set forth in §350.72 of this title (relating to Carcinogenic Risk Levels and Hazard Indices for Human Health Exposure Pathways).

(5) The person shall ensure that the PCLs established for the total petroleum hydrocarbons comply with the hazard index criteria as set forth in §350.72 of this title considering only the hydrocarbon fractions as shown in the figure in paragraph (2) of this subsection. The person shall follow the methodology prescribed in §350.72(d) of this title to adjust the hydrocarbon fraction PCLs to meet the hazard index criteria for the total petroleum hydrocarbons.

(6) The person shall use an analytical method approved by the executive director to determine the concentration of the hydrocarbon fractions at the affected property.

(7) When the bulk total petroleum hydrocarbons composition can be assumed to be relatively consistent based on process knowledge, the person may establish mixture-specific (e.g., gasoline, diesel, transformer mineral oil, or other petroleum product) PCLs based on property-specific mixture compositions or mixture compositions considered to be representative of the mixture. The person shall comply with the other provisions of this subsection in the development of the mixture-specific PCLs, but the person shall be allowed to determine compliance with the mixture-specific total petroleum hydrocarbons PCL with a bulk total petroleum hydrocarbons analytical method acceptable to the executive director in lieu of analysis of the concentration of each hydrocarbon fraction.

(8) The PCLs established for each individual aliphatic and aromatic hydrocarbon fraction used to establish the mixture specific PCLs shall not exceed a hazard quotient of 1 and the mixture-specific PCL shall not exceed a hazard index of 10.

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 August 16, 2024.

TRD-202403776
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 239-0634

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§363.2, 363.12 - 363.14, 363.17, 363.19, 363.33, and 363.41.

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

The TWDB proposes amendments to 31 TAC Chapter 363, containing the agency's rules related to the Financial Assistance Programs, to implement legislative changes from Senate Bill (SB) 28, SB 30, and SJR 75 by modernizing the language, providing consistency with TWDB's general financial assistance programs' rules, and clarifying requirements for borrowers for the water loan assistance program.

The TWDB proposes to amend the rules to implement legislation and clarify the method in which interest rates will be set for loans when the source of funding is other than bond proceeds.

In addition, the 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d), Action on Application, to add new subsections relating to TWDB's review and approval or disapproval plans and specifications for all wastewater projects funded by the TWDB. The new legislation allows the Board to adopt, by rule, an alternative standard of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

This rulemaking includes substantive and non-substantive changes and updates to make this chapter more consistent with TWDB rules and to clarify requirements for TWDB borrowers.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 363.2. Definitions of Terms.

The proposed amendment adds the definition of community water system consistent with 30 TAC Chapter 290, Subchapter D.

The proposed amendment adds the definition of rural political subdivision to reflect the amendment of §365.2(6) and includes as a rural political subdivision those municipalities with a population of 10,000 or less.

The proposed amendment adds the definition of risk-based review to implement HB 1565. The proposed amendment allows the use of different standards of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

The proposed amendment adds the definition WIF for the water infrastructure fund for Texas.

The proposed amendment adds the definition WLAF for the water loan assistance fund for Texas.

The remaining sections in §363.2 are proposed to be renumbered to accommodate the addition of §363.32(9).

Section 363.12. General, Legal, and Fiscal Information.

The proposed amendment updates the financial requirements for applicants receiving grant funding to make the requirements consistent with other TWDB rules.

Section 363.13. Preliminary Engineering Feasibility Report.

The proposed amendment adds authority for the board to waive or modify the requirements of the preliminary engineering feasibility report for programs or categories of applications for the agency's financial assistance programs.

Section 363.14. Environmental Assessment.

The proposed amendment adds authority for the board to waive or modify the requirements of the environmental assessment for programs or categories of applications for the agency's financial assistance programs.

Section 363.17. Grants from Water Loan Assistance Fund.

The proposed amendment adds water conservation projects as eligible projects to receive grant funds from the water loan assistance fund and adds the definition of conservation for those projects.

The proposed amendment updates outdated references to other titles and sections of the TAC and modernizes the rule language.

Section 363.19. Priority of Projects.

The proposed amendment clarifies that this section only applies to water infrastructure fund projects.

Section 363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation and Board Participation Projects.

The proposed amendments update the title of the rule, reflecting that the rule is for setting interest rates for certain of the Board's state financial assistance programs, modernize the rule language, and update how the Board sets interest rates for financial assistance to better align with the process used for other programs offered by the Board.

Section 363.41. Engineering Design Approvals.

The proposed amendment seeks to authorize the risk-based review method of review of plans, specifications, and related documents for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility, requirements, and methodology for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers.

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

a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §§15.011, 15.102, 15.439, 15.537, 15.977, 17.276, and 17.9225. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify eligibility, requirements, and methodology for TWDB borrowers. The proposed rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 15, by ensuring consistency with current law and improving the effectiveness of the financial assistance programs.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the applicable financial assistance programs.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.* Include "363.2, 363.12, 363.13, 363.14, 363.17, 363.19, 363.33, and 363.41" in the subject line of any comments submitted.

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §§6.101, 15.439, 16,342, and 16.4021. Additionally, this rulemaking is proposed under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Water Code, Chapters 15, 16, and 17.

§363.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--The entity applying for financial assistance, including the entity that receives the financial assistance, the entity that owns the project funded under this chapter, or an entity authorized to act on behalf of the applicant.

(2) Alternative Delivery Guidance--A document prepared by the Board after public review and comment and reviewed periodically that identifies alternative methods of project delivery available to applicants for financial assistance and the requirements for utilizing an alternative delivery method.

(3) Board--Texas Water Development Board.

(4) Building--Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(5) Certification of trust--An instrument executed by a home-rule municipality pursuant to Chapter 104, Local Government Code, governing the management of the loan proceeds in accordance with §114.086, Texas Property Code.

(6) Closing--The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(7) Commission--Texas Commission on Environmental Quality.

(8) Commitment--An offer by the board to provide financial assistance to an applicant who timely fulfills the conditions required in a board resolution.

(9) Community Water System - Has the meaning assigned by 30 TAC §290.38.

(10) [~~(9)~~] Construction account--A separate account created and maintained for the deposit of loan funds and utilized by the applicant to pay eligible expenses of the project.

(11) [~~(10)~~] Corporation--A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(12) [~~(11)~~] Debt--All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

(13) [~~(12)~~] Department--Texas Department of State Health Services.

(14) [~~(13)~~] Escrow account--A separate account maintained by an escrow agent for the board's deposit of escrowed funds until such funds are eligible for release to the construction account.

(15) [~~(14)~~] Escrow agent--Any of the following:

(A) a state or national bank designated by the comptroller as a state depository institution in accordance with Texas Government Code, Chapter 404, Subchapter C;

(B) a custodian of collateral as designated in accordance with Texas Government Code, Chapter 404, Subchapter D; or

(C) a municipal official responsible for managing the fiscal affairs of a home-rule municipality in accordance with Local Government Code, Chapter 104.

(16) [~~(15)~~] Executive administrator--The executive administrator of the board or a designated representative.

(17) [~~(16)~~] Financial assistance--Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15, Subchapters B, C, E, G, H, O, P, and Q; Chapter 16, Subchapters E, and F; Chapter 17, Subchapters D, F, G, I, K, and L; and Chapter 36, Subchapter L.

(18) [~~(17)~~] Grants--Financial assistance provided by the board for which repayment is not required.

(19) [~~(18)~~] Innovative technology--Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

(20) [~~(19)~~] Legislative Designation--A designation made by the legislature in accordance with §16.051(f) and (g), Texas Water Code.

(21) [~~(20)~~] Municipal use in gallons per capita per day--The total average daily amount of water diverted or pumped for treatment for potable use by a public water supply system. The calculation is made by dividing the water diverted or pumped for treatment for potable use by population served. Indirect reuse volumes shall be credited against total diversion volumes for the purpose of calculating gallons per capita per day for targets and goals developed pursuant to a water conservation plan.

(22) [~~(21)~~] Pre-design commitment--A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).

(23) [~~(22)~~] Private placement memorandum--A document functionally similar to an official statement used in connection with an offering of municipal securities in a private placement.

(24) [~~(23)~~] Release--The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

(25) Risk-Based Review--Method of review of plans, specifications, and related documents for sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to Texas Water Code §17.276.

(26) Rural Political Subdivision--A nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area ofwhich is located in an urban area with a population of more than 50,000;

(27) [~~(24)~~] SWIFT--The state water implementation fund for Texas.

(28) [~~(25)~~] SWIRFT--The state water implementation revenue fund for Texas.

(29) [~~(26)~~] Water Plan--The current state water plan prepared and adopted in accordance with Texas Water Code, §16.051.

(30) WIF--The water infrastructure fund.

(31) WLAF--The water loan assistance fund.

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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Ashley Harden
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8510

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DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §§363.12 - 363.14, 363.17, 363.19,

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §§6.101, 15.439, 16,342, and 16.4021. Additionally, this rulemaking is proposed under the authority of Texas Water Code Chapters 15, 16, and 17. In addition, the 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d) for the risk-based rule review.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

§363.12. General, Legal, and Fiscal Information.

An application will be in the form and in numbers prescribed by the executive administrator.

(1) The executive administrator may request any additional information needed to evaluate the application and may return any incomplete applications.

(2) The following information is required on all applications to the board for financial assistance to be considered an administratively complete application:

(A) General, fiscal and legal information required includes:

(i) the name and address of the political subdivision;

(ii) a citation of the law under which the political subdivision operates and was created;

(iii) the total cost of the project;

(iv) the amount of financial assistance being requested;

(v) a description of the project;

(vi) the name, address, e-mail, and telephone number of the authorized representative, engineer and any other consultant(s);

(vii) for financial assistance requiring repayment, the source of repayment and the status of legal authority to pledge selected revenues;

(viii) for financial assistance requiring repayment, the financing plan for repaying the total cost of the project;

(ix) the political subdivision's default history;

(x) an audit of the applicant for the preceding year prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, unless an alternative method of establishing a reliable accounting of the financial records of the applicant is approved by the executive administrator [~~the most recent annual financial statements and latest monthly and year-to-date financial reports for the General Fund and Utility Fund of the political subdivision~~];

(xi) a certified copy of a resolution of the political subdivision's governing body requesting financial assistance from the board, authorizing the submission of the application, and designating the authorized representative for executing the application, and for appearing before the board;

(xii) a notarized affidavit from the authorized representative stating [~~that~~]:

(I) for a political subdivision, the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Texas Government Code, Chapter 551);

(II) the information submitted in the application is true and correct according to the best knowledge and belief of the representative;

(III) the applicant has no litigation or other proceedings pending or threatened against the applicant that would materially adversely affect the financial condition of the applicant or the ability of the applicant to issue debt;

(IV) all [~~the applicant has no~~] pending, threatened, or outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature by EPA, Texas Commission on Environmental Quality, Texas Comptroller of Public Accounts, Texas Secretary of State, or any other federal, state or local government[~~, except for such actions identified in the affidavit~~];

(V) the applicant is, or will become, in compliance with all of its material contracts; and

(VI) the applicant is and will remain during the term of any financial assistance received from the board, in compliance with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board.

(xiii) any special request for repayment structure that reflects the particular needs of the political subdivision.

(B) Preliminary Engineering feasibility report. An applicant shall submit an engineering feasibility report in accordance with §363.13 of this title (relating to Preliminary Engineering Feasibility Report).

(C) Environmental assessment. An applicant shall submit an environmental assessment in accordance with §363.14 of this title (relating to Environmental Assessment).

(D) Required water conservation plan. An applicant shall submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(E) Required water loss audit. An applicant that is a retail public utility that provides potable water shall submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

(F) Funding from other sources. If additional funds are necessary to complete the project, or if the applicant has applied for and/or received a commitment from any other source for the project or any aspect of the project, an applicant shall submit a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

(G) Additional application information. An applicant shall submit any additional information requested by the executive administrator as necessary to complete the financial, legal, engineering, and environmental reviews.

§363.13. Preliminary Engineering Feasibility Report.

(a) An Applicant shall submit copies of a preliminary engineering feasibility report, signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, shall provide:

(1) a description and purpose of the project;

(2) the entities to be served and current and future population;

(3) the cost of the project;

(4) a description of alternatives considered and reasons for the selection of the project proposed;

(5) sufficient information to evaluate the engineering feasibility of the project;

(6) maps and drawings as necessary to locate and describe the project area; and

(7) a general description of the existing system.

(b) The executive administrator may request additional information or data as necessary to evaluate the project.

(c) The board may waive or modify the requirements of this section for any program or category of applications covered by this subchapter.

§363.14. Environmental Assessment.

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

(1) Environmental regulation--The acts, statutes, or policies listed in subsection (c)(1) of this section and the acts, statutes, or policies identified by the executive administrator pursuant to subsection (c)(2) of this section.

(2) Regulatory agency--The governmental agency with the jurisdiction to review compliance with or to enforce an environmental regulation.

(3) Preliminary project information--The information submitted by an applicant to the executive administrator pursuant to subsection (e) of this section.

(4) Affected environmental regulation--An environmental regulation with which a proposed project potentially may not conform as determined by the executive administrator under this section after reviewing the preliminary project information or the environmental assessment document, if any.

(5) Unaffected environmental regulation--An environmental regulation with which a proposed project will likely conform as determined by the executive administrator under this section after reviewing the preliminary project information or the environmental assessment document, if any.

(b) Applicability and Purpose. This section applies to projects funded by the board under any of the programs identified in §363.1 of this title (relating to Scope of Subchapter). The purpose of this section is to provide the executive administrator with sufficient information to inform the board whether a proposed project has been adequately reviewed by the regulatory agencies and whether such review provides a reasonable level of certainty that the project will comply with the environmental regulations.

(c) Applicable Environmental Regulations.

(1) Uniform requirements. Prior to commitment of funds, the proposed project shall be coordinated, to the extent appropriate under the three-level review of subsection (f) of this section, with the regulatory agencies to determine the degree of compliance with the following:

(A) Texas Antiquities Code as administered by the Texas Historical Commission;

(B) Federal Endangered Species Act as administered by the United States Fish and Wildlife Service;

(C) resource protection under the Texas Parks and Wildlife Code and Chapter 57 of this title (relating to Fisheries), as administered by the Texas Parks and Wildlife Department; and

(D) Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act as administered by the United States Department of the Army, Corps of Engineers.

(2) Conditional requirements. Proposed projects under certain circumstances may impact other environmental acts, statutes, or policies requiring additional coordination, to the extent appropriate under subsection (f) of this section. The executive administrator may require an applicant to perform such additional coordination for the following environmental regulations:

(A) Migratory Bird Treaty Act as administered by the United States Fish and Wildlife Service;

(B) National Flood Insurance Act of 1968 as administered by the local floodplain protection manager;

(C) state land easements under Texas Natural Resources Code, Chapter 51, as administered by the Texas General Land Office;

(D) parks and recreational lands pursuant to the Texas Parks and Wildlife Code, Chapter 26;

(E) marl, sand, gravel, shell, and mudshell permits under the Texas Parks and Wildlife Code, Chapter 86, and Chapter 57 of this title as administered by the Texas Parks and Wildlife Department; and

(F) any other act, statute, or policies deemed applicable by the executive administrator.

(d) Filing of Assessment or Statement. If an agency of the state or federal government prepares or requires an environmental assessment or an environmental impact statement to be prepared for substantially the same project proposed for board financial assistance, then the applicant shall file with the executive administrator the assessment or the statement prepared or required by the state or federal government, and a copy of the state or federal agency's issued decision document or permit in lieu of the information or environmental assessment prepared in accordance with subsections (e) or (f) of this section. Nothing herein shall be construed to require an applicant to prepare an environmental assessment when the information required under this section is currently available in an environmental assessment, environmental impact statement, or other documents prepared in connection with the same project.

(e) Preliminary Project Information. Prior to or concurrently with the submission of an application, the applicant shall submit the information set forth in this section to enable the executive administrator to determine the level of review for the proposed project. Information submitted pursuant to and sufficient to comply with §363.16(d) of this title (relating to Pre-design Funding Option) shall be sufficient to comply with this provision. The applicant shall submit:

(1) a written description of the proposed project;

(2) a map of sufficient detail to accurately depict the location of each project element; and

(3) preliminary data on any known environmental, social, and permitting issues which may affect the alternatives considered for implementation of the project or which may impact the existing environment in a manner that is the subject of any environmental regulation.

(f) Environmental Review. Based on the preliminary project information and any information readily available to the executive administrator, the executive administrator shall require the applicant to comply with the provisions of this subsection for either categorical exclusion review, mid-level review, or full review depending on the complexity of the project and its environmental impacts. Upon submission by the applicant of the information required by this subsection, the executive administrator shall summarize all relevant environmental data and any regulatory agency comments and public comments received regarding the proposed project in a memorandum. Such memorandum shall include a finding regarding the proposed project's compliance with the environmental regulations and may include a recommendation on any avoidance, minimization, or mitigation measures recommended by a regulatory agency through this review process. Such memorandum shall be submitted to and considered by the board with the application for financial assistance.

(1) Categorical Exclusion. If the executive administrator determines from the preliminary project information that the proposed project would not appear to cause significant environmental impacts under any environmental regulation, the executive administrator shall notify all regulatory agencies of the executive administrator's intent to exclude the proposed project from further environmental review. Unless an objection is received from any regulatory agency within 30 days after such notification is sent by the executive administrator, the executive administrator shall notify the applicant that the proposed project

is categorically excluded from further environmental review requirements.

(2) Mid-level Review. If the executive administrator determines from the proposed project information that the proposed project would appear to cause only significant environmental impacts which are limited in number or scope or which may be readily avoided, minimized, or mitigated, the proposed project shall be excluded from further review of unaffected environmental regulations while additional information for adequate review of affected environmental regulations shall be required in accordance with the following procedures.

(A) The executive administrator shall:

(i) notify the regulatory agencies administering the unaffected environmental regulations of the executive administrator's intent to exclude the proposed project from further review of the unaffected environmental regulations. Unless the executive administrator receives objections to the intent to exclude the project from review by such agency within 30 days after such notification is sent, the executive administrator shall deem the proposed project as excluded from further review of such unaffected environmental regulation; and

(ii) promptly notify the applicant of the unaffected environmental regulations which shall be excluded from further environmental review, the affected environmental regulations which shall require further environmental review, and any further information required by statute or the regulatory agencies administering the affected environmental regulations for adequate environmental review.

(B) The applicant shall then choose between one of the two following options and promptly notify the executive administrator of the option selected.

(i) The applicant shall coordinate with the regulatory agencies administering the affected environmental regulations as identified pursuant to subparagraph (A)(ii) of this paragraph, provide to the executive administrator copies of all information submitted by the applicant to such regulatory agencies, provide to the executive administrator copies of all documents received by the applicant from such regulatory agencies regarding the proposed project and, if the executive administrator has determined that it is an affected environmental regulation, documentation establishing compliance with Texas Parks and Wildlife Code, Chapter 26.

(ii) The applicant shall provide to the executive administrator the information required by the regulatory agencies administering the affected environmental regulations for their review and, if the executive administrator has determined that it is an affected environmental regulation, documentation establishing compliance with Texas Parks and Wildlife Code, Chapter 26, whereupon the executive administrator shall coordinate the project review with such regulatory agencies and provide to the applicant copies of all documents received from such regulatory agencies regarding the proposed project.

(3) Full Review. If the executive administrator determines from the proposed project information that the proposed project would appear to cause extensive significant impacts that are not readily avoided, minimized, or mitigated or would appear to involve a probable or known significant public controversy relating to environmental or social impacts, the following procedure shall apply:

(A) the applicant shall prepare an environmental assessment document which shall include all the information required by the regulatory agencies for adequate review by such agencies, a technical description of all the alternatives to the proposed project considered by the applicant, and a discussion of the proposed project's impact on environmental, social, and economic issues compared to such impacts of the alternatives considered;

(B) upon approval by the executive administrator of the environmental assessment document, the executive administrator will provide notification regarding the unaffected environmental regulations in accordance with the procedures under paragraph (2)(A) of this subsection; and

(C) the applicant shall submit the approved environmental assessment document to the regulatory agencies administering the affected environmental regulations for review and comment and provide to the executive administrator copies of all the documents received by the applicant from the regulatory agencies regarding the proposed project and, if the executive administrator has determined that it is an affected environmental regulation, documentation establishing compliance with Texas Parks and Wildlife Code, Chapter 26. Alternatively, the applicant may request that the executive administrator submit the environmental assessment document to such agencies and, upon completion of such coordination, the executive administrator shall provide to the applicant copies of all documents received from such regulatory agencies regarding the proposed project.

(4) Project Change. If the project is changed to include areas or issues that were previously unassessed, then the environmental review process identified in this section shall be employed for such unassessed areas or issues and the executive administrator shall determine the appropriate level of review for such changed project.

(5) Review Change. If, at any time prior to the submission of an application to the board and upon reliable information, the executive administrator determines that the level of review being performed for a proposed project is inappropriate or that the determination that an environmental regulation was an unaffected environmental regulation was incorrect, the executive administrator shall promptly notify the applicant of the required level of review under this section or of the affected environmental regulation for which additional review is required.

(g) The board may waive or modify the requirements of this section for any program or category of applications covered by this subchapter.

§363.17. Grants from Water Loan Assistance Fund.

(a) The board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

(A) from a community water system[,] do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D [~~§§290.1-290.26, 30 TAC §§290.38-290.51~~], and any applicable standards of any governmental unit with jurisdiction over such area;

(B) from individual wells[,] after treatment[,] do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC 290, Subchapter D [~~§§290.3, 290.4, 290.10, and 290.13~~], and any applicable standards of any governmental unit with jurisdiction over such area; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(2) sewer services:

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 305;

(B) for on-site sewerage facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 285 [~~and 313~~]; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(3) for purposes of any federal funds for colonias deposited in the water assistance fund, such area meets the federal criteria for use of such funds.

(b) The board may also provide grants from the Water Loan Assistance Fund for projects:

(1) for which federal grant funds are placed in the loan fund;

(2) for which a specific legislative appropriation is made; or

(3) for water conservation, desalination, brush control, weather modification, and regionalization and for providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

(c) Grant funds will be administered according to the terms of an agreement between the board and the grantee.

(d) For purposes of this section, conservation means those practices, techniques, and technologies that will reduce the consumption of water, reduce the real or apparent loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

§363.19. Priority of Projects.

For WIF projects only, when [~~When~~] necessitated by a limitation of funds, the board shall give priority to applications for funds for implementation of water supply projects in the water plan by entities that:

(1) have already demonstrated significant water conservation savings; or

(2) will achieve significant water conservation savings by implementing the proposed project for which the financial assistance is sought.

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Texas Water Development Board
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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §§6.101, 15.439, 16,342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapters 15, 16, and 17.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Financial Assistance Programs and Projects [~~Participation and Board Participation Projects~~].

(a) Procedure and method for setting interest rates.

(1) The executive administrator will set interest rates under this section for purchase of the board's interest in state and board participation projects or for loans on a date that is five business days prior to the political subdivision's adoption of the ordinance or resolution authorizing its bonds or drawdown of state participation funds and not more than 45 days before the anticipated closing of the loan or state participation project from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the executive administrator.

(2) For loans from the Texas Water Development Fund II or for rates for the purchase of the board's interest in state participation projects, the executive administrator will set the interest rate at:

(A) the rates established by the board under subsection (b) of this section;

(B) for loans funded by the board with proceeds of bonds, the interest of which is intended to be tax exempt for purposes of federal tax law, the executive administrator will limit the interest set pursuant to this subsection at no higher than the rate permitted under federal tax law to maintain the tax exemption for the interest on the board's bond; and

(C) the board may establish different interest rates for loans under this paragraph in order to facilitate a restructuring of an existing board loan that is in imminent risk of default as determined by the board.

(3) Interest rates for loans from the Water Loan Assistance Fund, or from funds from the board's sale of political subdivision bonds to the Texas Water Resources Finance Authority will be set [~~and updated as necessary to meet changing market conditions according to the cost of funds to the board, risk factors of managing the board's loan portfolio, and market rate scales according to the Municipal Market Data A scale~~]. To calculate the cost of funds, the board will weight the funds pro rata amount of funds available from each source, as applicable. The interest rate scale will include the program subsidy, if any, as determined by the board. The board may establish different interest rates for loans under this paragraph if it finds such rates are legislatively directed or are necessary to promote major water initiatives designed to provide significant regional benefit.

(b) Lending and interest rate scale. After each bond sale, or as necessary to meet changing market conditions, the board will set the interest [~~lending~~] rate scale for loans and the interest rate scale for the purchase of the board's interest in state and board participation projects based upon the cost of funds to the board, risk factors of managing the board's loan portfolio, and market rate scales. To calculate the cost of funds, the board will add new bond proceeds to those remaining bond funds that are not currently assigned to scheduled [~~schedule~~] loan closings, weighting the funds pro rata by the amount of funds available from [~~by dollars and true interest costs of~~] each source. The interest rate

scale will [~~shall~~] include the program subsidy, if any, as approved by the board. The board will establish separate interest [~~lending~~] rate scales for tax-exempt and taxable loans [~~projects~~] from each of the following:

(1) loans from the Texas Water Development Fund II;

(2) loans from the Water Infrastructure Fund;

(3) purchase of the board's interest in state participation projects from the State Participation Account;

(4) loans from the Economically Distressed Area Program Account;

(5) if revenue bonds constitute the consideration for the purchase of the board's interest in a state participation project by a political subdivision, the revenue bonds shall bear interest at:

(A) the prevailing state participation interest [~~lending~~] rate, as set in subsection (b)(3) of this section;

(B) if there is outstanding board indebtedness related to the purchase of its state participation interest, then at the rate then in effect at the time the board provided funds, through the issuance of bonds, to participate in the project; or

(C) a different rate as established by the board, where no schedule for the purchase of the board's interest in the project was fixed at the time the board provided funds to participate in the project; and

(6) loans from the SWIRFT; and [~~,~~]

(7) loans from the WLAF.

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DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §363.41

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §§6.101, 15.439, 16,342, and 16.4021. Additionally, this rulemaking is proposed under the authority of Texas Water Code Chapters 15 and 17. In addition, the 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d) for the risk-based rule review.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

§363.41. Engineering Design Approvals.

(a) An applicant with a commitment of financial assistance from the board shall obtain Executive Administrator approval of contract documents, including engineering plans and specifications and bid documents, prior to receiving bids and awarding construction contracts. The applicant shall submit two copies of contract documents, which shall be as detailed as would be required for submission to contractors bidding on the work, and which shall be consistent with the engineering feasibility information submitted with the application. These contract documents may be submitted in draft form. For water supply projects requiring commission review, the applicant shall send an additional copy to the commission. The contract documents must contain the following:

(1) provisions assuring compliance with the board's rules and all relevant statutes;

(2) provisions providing for the political subdivision to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in the retainage is authorized by the executive administrator;

(3) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board;

(4) a high-resolution digital, searchable copy of the plans and specifications; and

(5) any additional conditions that may be requested by the executive administrator.

(b) An applicant with a commitment of financial assistance from the board may qualify for a risk-based review pursuant to Texas Water Code, § 17.276.

(1) The EA may perform a risk-based review when:

(A) the applicant's internal risk score rating is 2B or higher; and

(B) the design scope is limited to in-situ replacement or rehabilitation of existing facilities, or new gravity sewer lines and manholes, and project work is not located within the Edwards Aquifer recharge zone; or the applicant has approval authority granted by TCEQ for collection systems pursuant to 30 TAC §217.8.

(2) Designs qualifying for a risk-based review require the following:

(A) contract documents submitted for review and approval in accordance with this section; and

(B) certification from the applicant's design engineer verifying the plans and specifications comply with 30 TAC Chapter 217 requirements and include no variances, or the entity has approval authority granted by the TCEQ for collection systems.

(3) The EA may outline additional criteria in TWDB's guidance documents.

(c) [~~(b)~~] Engineering Design Approvals for those Projects Required to use Iron or Steel Products Produced in the United States.

(1) Except as provided by subsections (d) and (e) [~~(c) and (d)~~] of this section, this section applies to Projects with the board and resulting bid documents submitted to the board or construction contracts entered into after September 1, 2017.

(2) In this section, the following terms have the assigned meanings:

(A) Iron and steel products--Products made primarily of iron or steel that are permanently incorporated into the public water system, treatment works, agricultural water conservation Project, or flood project, including, but not limited to: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.

(B) Manufacturing Process--The application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product functionally different from a finished product produced merely from assembling the materials into a product or elements into a product.

(C) Mechanical and electrical components, equipment, systems, and appurtenances--Include, but are not limited to, pumps, motors, gear reducers, drives (including variable frequency drives), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, dewatering equipment, electrical supports/covers/shielding, and other appurtenances related to an electrical system necessary for operation or concealment. An electrical system includes all equipment, facilities, and assets owned by an electric utility, as that term is defined in §31.002 Utilities Code.

(D) Political subdivision--Includes a county, municipality, municipal utility district, water control and improvement district, special utility district, and other types of water districts, including those created under Texas Constitution Article III, Section 52 or Article XVI, Section 59, and nonprofit water supply corporations created and operating under Texas Water Code, Chapter 67.

(E) Produced in the United States--With respect to iron or steel products, a product for which all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(F) Project--A contract between the board and a person or political subdivision.

(3) Political subdivisions and persons with Projects funded with financial assistance from the board shall obtain Executive Administrator approval of contract documents, including engineering plans and specifications and bid documents, prior to receiving bids and awarding construction contracts. Except as provided by subsections (d) and (e) [~~(c) and (d)~~] of this section, contract documents and bid documents provided to all bidders must include language requiring that any iron or steel products produced through a manufacturing process used in the Project, be produced in the United States, specifically where funds will be used to:

(A) construct, remodel, or alter buildings, structures, or infrastructure; or

(B) supply a material for a project between the board and a person or a political subdivision; or

(C) finance, refinance, or provide money from funds administered by the board for a project.

(d) [~~(c)~~] Exemptions from subsection (c) [~~(b)~~] of this section.

(1) Section 363.41(c)(3) [~~363.41(b)(3)~~] does not apply if the board or Executive Administrator has made a determination that:

(A) iron or steel products, produced in the United States, to be used in the Project are not:

(i) produced in sufficient quantities; or

(ii) reasonably available at the time contract documents and bid documents are executed with contractors or subcontractors; or

(iii) of a satisfactory quality to be used in the Project; or

(B) the use of iron or steel products produced in the United States will increase the total cost of the Project by more than 20 percent; or

(C) complying with the use of iron or steel products as required by this section is inconsistent with the public interest.

(2) The following components are exempt from complying with §363.41(c)(3) [~~§363.41(b)(3)~~] as they are not iron or steel products:

(A) mechanical and electrical components, equipment, systems, and appurtenances; and

(B) iron or steel products that are not permanently incorporated into a Project.

(e) [~~(d)~~] Section 363.41(c) [~~363.41(b)~~] does not apply where the board has adopted a resolution approving an application for financial assistance before May 1, 2019, for any portion of financing as described by §§15.432 or 15.472, Water Code.

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §375.82

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §375.82.

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

The 88th Texas Legislature enacted House Bill 1565, amending Tex. Water Code §17.276(d), Action on Application, to add new subsections relating to TWDB's review and approval or disapproval plans and specifications for all wastewater projects funded by the TWDB. The new legislation allows the Board to adopt, by rule, an alternative standard of review and approval of design criteria for plans and specifications for sewage collection, treatment, and disposal systems.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 375.82. Contract Documents: Review and Approval.

The proposed amendment seeks to authorize the risk-based review method of review of plans, specifications, and related docu-

ments for certain sewage collection, treatment, and disposal system projects that are compliant with existing state statutes and good public health engineering practices pursuant to §17.276(d).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are amended to reduce the burden or responsibilities imposed on regulated persons by the rule; are necessary to protect water resources of this state as authorized by the Texas Water Code; and are necessary to protect the health, safety, and welfare of the residents of this state.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility, requirements, and methodology for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §2001.022)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §17.956. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify eligibility, requirements, and methodology for TWDB borrowers. The proposed rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 17, clarifying how the risk-based review analysis will be used for TWDB borrowers, and providing greater consistency between TWDB program rules.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the applicable financial assistance programs, including the risk-based review.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.* Include "375.82" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §17.276.

This rulemaking affects Water Code, Chapter 17.

§375.82. Contract Documents: Review and Approval.

(a) Contract documents include the documents that form the construction contracts and the documents that form the contracts for alternative methods of project delivery, which may include the construction phase or other phases of the project.

(b) Unless otherwise specified by the executive administrator, an Applicant must submit at least [~~one paper and~~] one electronic copy of proposed contract documents, including the engineering plans and specifications, which must be as detailed as would be required for submission to contractors bidding on the work. The Applicant must provide the executive administrator with all contract documents proposed for bid advertising. The executive administrator will review contract documents:

(1) to ensure consistency with the approved engineering feasibility report and with approved environmental planning documents;

(2) to ensure the proposed construction drawings and specifications provide adequate information so that a contractor can bid and construct the project without additional details or directions;

(3) to ensure compliance with Commission rules at 30 TAC Chapter 217 (relating to Design Criteria for Domestic Wastewater Systems) and other applicable state and federal laws and rules;

(4) to ensure the contract documents notify the contractor about the Board's authority to audit project files and inspect during construction; and

(5) to ensure compliance with other requirements as provided in guidance forms and documents, including any additional documentation required by EPA for equivalency projects.

(c) An applicant with a commitment of financial assistance from the Board may qualify for a risk-based review pursuant to Texas Water Code, § 17.276.

(1) The EA may perform a risk-based review when:

(A) the applicant's internal risk score rating is 2B or higher; and

(B) the design scope is limited to in-situ replacement or rehabilitation of existing facilities, or new gravity sewer lines and manholes, and project work is not located within the Edwards Aquifer recharge zone; or the applicant has approval authority granted by TCEQ for collection systems pursuant to 30 TAC §217.8.

(2) Designs qualifying for a risk-based review require the following:

(A) contract documents submitted for review and approval in accordance with this section; and

(B) certification from the applicant's design engineer verifying the plans and specifications comply with 30 TAC Chapter 217 requirements and include no variances, or the entity has approval authority granted by the TCEQ for collection systems.

(3) The EA may outline additional criteria in TWDB's guidance documents.

(d) [~~(c)~~] Other approvals. The Applicant shall obtain the approval of the plans and specifications from any other local, state, and federal agencies having jurisdiction over the project. The executive administrator's approval is not an assumption of the Applicants' liability or responsibility to conform to all requirements of applicable laws relating to design, construction, operation, or performance of the project.

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 August 15, 2024.

TRD-202403740
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 463-8510

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) proposes amendments to §4.12, concerning Exemptions and Exceptions. The proposed amendments remove concrete pumps from the list of exempted vehicles consistent with §644.052 of the Transportation Code.

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 the proposed amendments will result in an adverse economic effect on small businesses and micro-businesses, but there will be no adverse economic effect on rural communities. The department estimates that there are fewer than 1,000 companies in Texas that own concrete pump trucks, and most are likely small and micro-businesses. Some of these companies are interstate in nature and already adhere to federal standards and thus, would not be affected. The department estimates that the projected economic impact for small and micro-businesses who own concrete pump trucks will be $2,000-$3,000 per year due to increased costs for compliance with safety training and reporting. There are no alternative methods that the department may consider in mitigating these effects under a regulatory flexibility analysis because the proposed amendments are required by §644.052 of the Transportation Code.

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 enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program, which promotes the safety of all travelers on Texas roads.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a 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 an existing regulation. The proposed rulemaking does increase 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.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, September 17, 2024, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.12 regarding Exemptions and Exceptions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.003, §644.051, §644.052, and §644.155 are affected by this proposal.

§4.12. Exemptions and Exceptions.

(a) Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the vehicles detailed in subparagraphs (A) - (C) [~~(A)~~ - ~~(D)~~] of this paragraph when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a

mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights; or

(C) a vehicle transporting seed cotton.[; ~~or~~]

[~~(D) concrete pumps.~~]

(2) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to intrastate commerce. Drivers in intrastate commerce will be permitted to drive 12 hours following 8 consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 consecutive hours off duty by taking a combination of at least 8 consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Part 40 and Part 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 14 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 14 hours on duty; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day; and

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently.

(5) An electronic logging device (ELD) and an automatic on-board recording device have the meaning as defined in Title 49, Code of Federal Regulations, §395.2.

(6) Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of Title 49, Code of Federal Regulations, Part 395;

(B) Using an automatic on-board recording device that meets the requirements of Title 49, Code of Federal Regulations, §395.15; or

(C) Manually, recorded as specified in Title 49, Code of Federal Regulations, §395.8. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

(7) Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with Title 49, Code of Federal Regulations, Part 395.

(8) The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(b) Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are:

(1) Title 49, Code of Federal Regulations, §393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equip-

ment" has the meaning assigned by Title 49, Code of Federal Regulations, §395.2.

(5) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(1) shall not apply to intrastate commerce. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(6) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(2) shall not apply to intrastate commerce. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(7) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations §571.121) applicable to the vehicle at the time it was manufactured.

(8) Title 49, Code of Federal Regulations, §390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the exceptions detailed in subparagraphs (A) and (B) of this paragraph:

(A) Title 49, Code of Federal Regulations, §390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death, or substantial property damage but does not include routine requests to refill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, §390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(9) The provisions of Title 49, Code of Federal Regulations, Part 380 (Subparts A - D) shall not apply to intrastate motor carriers and drivers. [~~Title 49, Code of Federal Regulations.~~]

(10) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, §395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(11) The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

(12) Drivers of vehicles under this section, operating in intrastate transportation, who encounter adverse driving conditions and cannot, because of those conditions, safely complete the run within the maximum driving time or duty time during which driving is permitted under subsection (a)(2) of this section, may drive and be permitted or required to drive a commercial motor vehicle for not more than two additional hours beyond the maximum allowable hours permitted under subsection (a)(2) of this section to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. Adverse driving conditions mean [~~means~~] snow, sleet, fog, or other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the driver immediately prior to beginning the duty day or immediately before beginning driving after a qualifying rest break or sleeper berth period, or a motor carrier immediately prior to dispatching the driver.

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 August 14, 2024.

TRD-202403707
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 424-5848

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.306

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §341.306, Providing Information to TJJD.

SUMMARY OF CHANGES

New §341.306 will require juvenile probation departments to annually submit to TJJD information on gaps in resources, programs, and services for juveniles that, had they been available, might have allowed the juveniles to remain in the community rather than being committed to TJJD.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Rachel Gandy, Chief of Staff, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be increased access to statewide data that the agency and its partners may use to expand local capacity and keep additional youth as shallow in the juvenile justice system as appropriate.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §203.0185, Human Resources Code (as added by SB 1727, 88th Legislature, Regular Session), which requires the board to adopt rules requiring juvenile probation departments to report to TJJD relevant information on gaps in resources, programs, and services that, if available in the community, may allow children to be kept closer to home as an alternative to commitment to TJJD.

No other statute, code, or article is affected by this proposal.

§341.306. Providing Information to TJJD.

(a) The chief administrative officer or designee must annually provide TJJD with information on gaps in resources, programs, and services for juveniles served by the juvenile probation department.

(b) The information must include a description of the needs of juveniles committed to TJJD that were not met with community resources and information on the types of resources, programs, and services that, if available in the community, might have allowed the juveniles to remain in the community as an alternative to commitment to TJJD.

(c) The information shall be provided in the format and by the deadline established by TJJD.

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 August 14, 2024.

TRD-202403724
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 490-7278

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CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §385.8103

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §385.8103, Board Proceedings.

SUMMARY OF CHANGES

New §385.8103 will establish provisions relating to the Texas Juvenile Justice Board's organization, powers and responsibilities, and meetings.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Rachel Gandy, Chief of Staff, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be greater transparency regarding the TJJD Governing Board and the ways in which it conducts its business.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJD.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed section does not impact fees paid to TJJD.

(5) The proposed section does not create a new regulation.

(6) The proposed section does not expand, limit, or repeal an existing regulation.

(7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §202.008, Human Resources Code, which requires the board to adopt rules regulating the board's proceedings.

No other statute, code, or article is affected by this proposal.

§385.8103. Board Proceedings.

(a) Organization.

(1) The Texas Juvenile Justice Board (Board) is a nine-member body appointed by the governor to oversee the Texas Juvenile Justice Department. The Board chair is designated by and serves at the pleasure of the governor.

(2) The Board may elect or appoint a vice chair to preside over meetings in the chair's absence.

(3) The Board chair may appoint members of the Board to be chairs or members of standing or limited-purpose committees.

(4) Unless otherwise provided by law, the Board chair, with the Board's approval, shall appoint the members of any advisory committees established under Chapter 203, Human Resources Code.

(b) Powers and Responsibilities.

(1) The Board shall have primary responsibility for policy-making activities, including, but not limited to, establishing the department's mission and adopting rules.

(2) The Board shall have the sole responsibility for the adoption of rules proposed by the Board or the department. Unless otherwise provided by law, the Board shall follow the rulemaking procedures established in the Administrative Procedure Act (Chapter 2001, Government Code).

(3) The Board may delegate to the executive director the Board's responsibilities, as the Board determines appropriate. In making such a delegation, the Board shall provide clear direction, performance measures, reporting requirements, and oversight, as appropriate, to ensure the delegated responsibilities are performed.

(4) The Board shall develop and publish on TJJD's website procedures regarding its operations and proceedings in a governance manual.

(c) Meetings.

(1) The Board shall meet at least quarterly at a site determined by the chair.

(2) The Board meets at the call of the Board chair.

(3) Every regular and special-called meeting of the Board shall be announced and conducted in accordance with the Open Meetings Act (Chapter 551, Government Code). These meetings shall be open to the public as provided by the Open Meetings Act.

(4) Board meetings shall be conducted according to the current edition of *Robert's Rules of Order Newly Revised* in all instances to which they are applicable as long as they are not inconsistent with the Texas Constitution or the statutes or rules applicable to the Board. Any rule within *Robert's Rules of Order Newly Revised* may be modified as deemed necessary by the Board chair for the proper conduct of the meeting, subject to an objection by a Board member.

(5) The transaction of business before the Board requires a quorum of the Board be present. A quorum of the Board is five members. When a quorum is present, a motion before the Board is carried by an affirmative vote of the majority of the Board members present that are participating in the vote.

(6) As a member of the Board, the Board chair may make motions without the necessity of relinquishing the chair, subject to an objection from a Board member.

(7) The Board chair may limit the number and length of comments provided on any item on the agenda, subject to an objection from a Board member.

(8) The Board shall provide the public with a reasonable opportunity to address the Board on issues under the Board's jurisdiction.

(A) A person who wants to speak during a Board meeting must register in accordance with the Board meeting instructions. The person may speak during the public comment portion of the meeting or, at the discretion of the Board chair, during the discussion of a specific agenda item.

(B) The Board or the department may provide instructions regarding the presentation of public comments during a Board meeting.

(9) The Board shall provide the Office of Independent Ombudsman with a reasonable opportunity to address the Board on issues under the Board's jurisdiction.

(10) Department staff shall ensure Board members are provided the materials necessary to conduct Board business in advance of Board meetings.

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 August 14, 2024.

TRD-202403723
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: September 29, 2024
For further information, please call: (512) 490-7278

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 461. VETERANS EDUCATION

The Texas Veterans Commission (Commission) proposes amendments to Chapter 461, Subchapter A, §461.20, Definitions and Subchapter B, §461.200, Authority and Purpose.

PART I. PURPOSE AND BACKGROUND

The proposed amendments update the rule to add "Space Force" to Title 40, TAC, Chapter 461, Subchapter A, Exemption Program for Veterans and Their Dependents (The Hazlewood Act), Definitions, §461.20(15), Initial Entry Training, and to correct the statutory authority for the Veteran Education Excellence Recognition Award (VEERA) Network in Chapter 461, Subchapter B, Veteran Education Excellence Recognition Award (Veera) Network. Currently, the rule lists Texas Government Code, §434.251, Definitions, as the statutory authority for the Veteran Education Excellence Recognition Award (VEERA) Network.

PART II. EXPLANATION OF SECTIONS

SUBCHAPTER A. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

Section 461.20 Definitions

In Subsection (15): Adds the "Space Force" to the definition of "Initial entry training."

SUBCHAPTER B. VETERAN EDUCATION EXCELLENCE RECOGNITION AWARD (VEERA) NETWORK

Section 461.200 Authority and Purpose

In Subsection (a): Corrects the statutory authority for this subchapter to Texas Government Code § 434.252 relating to the Veteran Education Excellence Recognition Award (Veera) Network.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Stephanie Robinson, Chief Financial Officer, Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

COSTS TO REGULATED PERSONS

Stephanie Robinson, Chief Financial Officer, has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services, Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state as a result of the proposed rule.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Director, Veterans Entrepreneur Program, Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director, Texas Veterans Commission, has determined that for each year of the first five years the proposed rule are in effect, the public benefit anticipated as a result of administering the amended rule will reduce the need for formal disputes and settle disputes at the lowest level possible.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendments are in effect, the following statements will apply:

The proposed rule amendments will not create or eliminate a government program.

Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.

Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.

No fees will be created by the proposed rule amendments.

The proposed rule amendments will not require new regulations.

The proposed rule amendments have no effect on existing regulations.

The proposed rule amendments have no effect on the number of individuals subject to the rule's applicability.

The proposed rule amendments have no effect on this state's economy.

PART IV. COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 461 Rules" in the subject line. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

40 TAC §461.20

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.

No other statutes, articles, or codes are affected by this proposal.

§461.20. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commission--The Texas Veterans Commission.

(3) Census date--The date in an academic term or semester for which an institution is required to certify a person's enrollment in the institution to the Board for the purposes of determining formula funding for the institution.

(4) Contact Hour--A time unit of instruction as defined in 19 Texas Administrative Code §13.1.

(5) Continuing education unit or CEU--A unit of measure of instruction as defined in 19 Texas Administrative Code §9.1.

(6) Degree certified hours--Hours for which the student is registered as of the census date of a term or semester.

(7) Dependent--An individual who was claimed as a dependent for federal income tax purposes by the individual's parent or court-appointed legal guardian, or as defined in Texas Education Code §54.341(k) and (m) in a particular year and in the previous tax year. A child was a dependent if he or she was claimed as such by a parent or legal guardian during the veteran's year of entry into the service and in the previous tax year.

(8) Deposit fees--Fees that an institution may collect under Texas Education Code §54.502.

(9) Eligible Person--

(A) Veteran as defined in Texas Education Code §54.341(a);

(B) Spouse as defined in Texas Education Code §54.341(a-2); or

(C) Child or Children as defined by Texas Education Code §54.341(m).

(10) Extraordinary costs--Only applicable for public junior colleges, public technical institutes, or public state colleges as defined in Texas Education Code §61.003. The cost of tuition and fees that exceed the average tuition and fee charges at the institution.

(11) Federal income tax return--An IRS Transcript of Tax Return for that particular year.

(12) Guidelines for Instructional Programs in Workforce Education (GIPWE)--A Board approved publication as defined in 19 Texas Administrative Code §9.1.

(13) Hazlewood Act Exemption--The tuition and partial fee exemption authorized under Texas Education Code §54.341.

(14) Hazlewood Legacy Act--The tuition and partial fee exemption authorized under Texas Education Code §54.341(k).

(15) Initial entry training--Includes Basic Combat Training and Advanced Individual Training, One Station Unit Training, Officer Candidate School, service as a cadet at the United States Military Academy, and service as a cadet candidate at the United States Military Academy Preparatory School (Army); Recruit Training and Skill Training (or 'A' School), Officer Candidate School, service as a midshipman at the United States Naval Academy, and service as a midshipman candidate at the Naval Academy Preparatory School (Navy); Basic Military Training and Technical Training, Officer Training School, service as a cadet at the United States Air Force Academy; and service as a cadet candidate at the United States Air Force Academy Preparatory School (Air Force and Space Force); Recruit Training and Marine Corps Training (or School of Infantry Training), Officer Candidates School (Marine Corps); and Basic Training, Officer Candidate School, and service as a cadet at the United States Coast Guard Academy (Coast Guard), or the equivalent training for that branch of service.

(16) Institution--A Texas public institution of higher education as defined in Texas Education Code §61.003(8).

(17) Qualifying service--Discharged under honorable conditions after serving on active military duty, excluding initial entry training, for more than 180 days as documented by the Certificate of Release or Discharge from Active Duty (DD FORM 214) issued by the Department of Defense or other qualifying discharge document. Other qualifying discharge documents are:

(A) WD AGO 53, Enlisted Record and Report of Separation Honorable Discharge;

(B) WD AGO 53-55, Enlisted Record and Report of Separation Honorable Discharge;

(C) WD AGO 53-58, Enlisted Record and Report of Separation General Discharge;

(D) NAVCG-553, Notice of Separation from U.S. Coast Guard;

(E) NAVMC 78-PD, U.S. Marine Corps Report of Separation;

(F) NAVPERS-553, Notice of Separation from U.S. Naval Service; or

(G) NA Form 13038, Certification of Military Service. This form may only be used upon written verification from the National Archives that a DD Form 214 or equivalent discharge document has been lost or destroyed and may only be used to verify days of qualifying service and character of service.

(18) Resident of Texas--A resident of the State of Texas as determined in accordance with 19 Texas Administrative Code Chapter 21, Subchapter B (relating to Determination of Resident Status).

(19) Satisfactory academic progress--A grade point average that satisfies the institution's requirement for making satisfactory academic progress toward a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid. This requirement does not apply to spouses or children of veterans who died from a service-related injury or illness, or who were classified as missing in action (MIA) or killed in action (KIA).

(20) Semester Credit Hour--A unit of measure of instruction as defined in 19 Texas Administrative Code §13.1.

(21) Stacking--Concurrent use of state and federal veteran education benefits by an eligible person.

(22) Student services fees--Fees that an institution may, under Texas Education Code, §§54.503, 54.5061, and 54.513, elect to charge to students to cover the cost of student services.

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 August 15, 2024.

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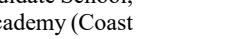
Kathleen Cordova
General Counsel
Texas Veterans Commission
Earliest possible date of adoption: September 29, 2024
For further information, please call: (737) 320-4167



SUBCHAPTER B. VETERAN EDUCATION EXCELLENCE RECOGNITION AWARD (VEERA) NETWORK

40 TAC §461.200

PART V. STATUTORY AUTHORITY

The rule amendment is proposed under Texas Government Code §434.010 which authorizes the commission to establish rules it considers necessary for its administration.

No other statutes, articles, or codes are affected by this proposal.

§461.200. Authority and Purpose.

(a) Authority. The authority for this subchapter is provided in Texas Government Code §434.252 [~~§434.251~~] relating to Veteran Education Excellence Recognition Award (VEERA) Network.

(b) Purpose. The purpose of this subchapter is to provide procedures and criteria for the administration of the Veterans Education Excellence Recognition Award (VEERA) Network.

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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General Counsel
Texas Veterans Commission
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §801.10, §801.16

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.16

TWC proposes the following new section to Chapter 801, relating to Local Workforce Development Boards:

Subchapter A. General Provisions, §801.10

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 801 rule change is to:

--add language regarding the addition and removal of chief elected officials (CEOs) due to changes in local populations, elections, or other relevant events that would cause a change to a Local Workforce Development Board's (Board's) CEO composition;

--add a new section regarding Board procedures to assess the need for changes in the local CEO composition; and

--amend §801.16 to make the language more inclusive to all situations in which there are changes to a Board's CEO membership.

Amendments to this rule are in response to the growing populations of Texas municipalities. The proposed rule changes present an opportunity for Boards to assess their local municipalities and the composition of their CEOs. The changes will accelerate new CEOs' awareness of their authority, roles, and responsibilities, and facilitate their swift engagement in the Board's workforce system.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§801.10. Administering Chief Elected Official Appointment and Removal

New §801.10 provides a procedure for the Board's recurring assessment of its local CEOs for the purpose of their addition or removal, as necessary. This procedure requires Boards to:

--use Texas Demographic Center data and local election results in their assessment; and

--outreach newly elected officials.

§801.16. Partnership Agreement

Section 801.16 is amended to provide a procedure for amending a Board's Partnership Agreement pertaining to any situation in which a CEO is added or removed.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

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 US Constitution or the Texas Constitution, §17 or §19, Article I, or 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. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to add language to the rule regarding the addition and removal of Board CEOs due to changes in local populations, elections, or other relevant events that would cause a change to a Board's CEO composition.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US 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.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

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

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Mary York, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide more clarity to the CEO selection process; accelerate new CEOs' awareness of their authority, roles, and responsibilities; and facilitate their swift engagement in the Board's workforce system.

PART IV. COORDINATION ACTIVITIES

During a regularly scheduled conference call on June 21, 2024, TWC Workforce Development Division staff informed Board executive directors and staff of the upcoming rule changes and sought their input.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 30, 2024.

PART VI.

STATUTORY AUTHORITY

The rules are proposed under:

--Texas Government Code §2308.253(a), which provides TWC with the specific authority to establish rules governing the formation of Local Workforce Development Boards; and

--Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Title 10, Texas Government Code, Chapter 2308.

§801.10. Administering Chief Elected Official Appointment and Removal.

(a) Based on the criteria set forth in §801.1(d) of this subchapter, Boards shall determine the need to add or remove CEOs.

(1) Following county and municipal elections, Boards shall identify and outreach new CEOs to inform them of their designation under this chapter.

(2) Not less than quarterly, Boards shall review local population amounts using figures reported to the Texas Demographic Center, consistent with §801.1(d)(1)(D) of this subchapter, to identify and notify elected officials of changes to CEO status.

(b) Boards shall notify the Agency within 15 calendar days of any changes in CEOs.

§801.16. Partnership Agreement.

(a) The CEOs in a workforce area shall enter into a Partnership Agreement with the Board as required by Texas Government Code §2308.253(g) and by §801.1(g)(2)(A)(i)(I) - (VII) of this subchapter.

(b) The Partnership Agreement shall be signed by the current CEOs and the Board Chair.

(c) Any amendment to a Partnership Agreement or[~~,~~] change to a Board's organizational plan or bylaws[~~, or notice of an election a new CEO or Board Chair~~] shall be submitted to the Agency within 15 calendar days of the adoption of such amendment or[~~,~~] change[~~, or election~~].

(d) If a CEO or Board Chair is newly appointed, elected, or determined to meet the requirements of §801.1(d) of this subchapter during the then current, two-year programming cycle, the individual [~~elected during the then-current, two-year program planning cycle, such newly elected individual~~] shall submit to the Agency a written statement acknowledging that the individual [~~he or she~~]:

(1) has read, understands, and will comply with the current Partnership Agreement; and

(2) reserves the option to request negotiations to amend the Partnership Agreement at any time during the official's tenure as CEO or Board Chair.

(e) All Partnership Agreements and Board organizational plans or bylaws shall state that Board members will not be permitted to delegate any Board duties to proxies or alternates.

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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Les Trobman
General Counsel
Texas Workforce Commission
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