ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 19 (Quarantines and Noxious and Invasive Plants), Subchapter A (General Quarantine Provisions), §19.1 (Definitions), §19.2 (Inspection Certificates), §19.3 (Inspection and Testing Fees), and §19.5 (Phytosanitary Growing Season Inspection); Subchapter E (Date Palm Lethal Decline Quarantine), §19.50 (Quarantined Pest), §19.51 (Geographical Areas Subject to the Quarantine) and §19.52 (Quarantined Articles); Subchapter F (Lethal Yellowing Quarantine), §19.60 (Quarantined Pest), §19.61 (Quarantined Areas), and §19.62 (Quarantined Articles); Subchapter G (European Brown Garden Snail Quarantine), §19.73 (Restrictions); Subchapter H (Gypsy Moth Quarantine), §19.81 (Adoption of Federal Quarantine); Subchapter J (Red Imported Fire Ant Quarantine), §19.101 (Quarantined Areas) and §19.103 (Restrictions); Subchapter K (European Corn Borer Quarantine), §19.113 (Restrictions); Subchapter M (Sweet Potato Weevil Quarantine), §19.133 (Restrictions); Subchapter Q (Sapote Fruit Fly Quarantine), §19.170 (Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity)), §19.171 (Duration of the Quarantine), §19.172 (Infested Areas), §19.173 (Non-Infested Areas), §19.174 (Articles Subject to the Quarantine), §19.175 (Restrictions on Movement of Articles Subject to the Quarantine) and §19.176 (Monitoring and Eradication of the Dangerous Pest or Plant Disease); and Subchapter X (Citrus Greening Quarantine), §19.616 (Infested Geographical Areas Subject to the Quarantine) and §19.622 (Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone). The amendments are adopted without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3669) and will not be republished. Section 19.23 is being adopted with changes due to grammar corrections, It will be republished.

The Department also adopts the repeal of Subchapter I (Pine Shoot Beetle Quarantine), §19.91 (Adoption of Federal Quarantine); and Subchapter Q (Sapote Fruit Fly Quarantine), §19.177 (Consequences for Failure to Comply with Quarantine Restrictions) and §19.178 (Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions), as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3669).

The Department further adopts new Subchapter Y (Cottonseed Bug Quarantine), §§19.623 - 19.626, concerning a quarantine for a dangerous plant pest, the cottonseed bug, *Oxycarenus hyalinipennis*. The amendments are adopted without changes to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3669) and will not be republished.

The amendments; addition of new Subchapter Y (Cottonseed Bug Quarantine); and repeal of Subchapter I (Pine Shoot Beetle Quarantine), §19.91 (Adoption of Federal Quarantine); and Subchapter Q (Sapote Fruit Fly Quarantine), §19.177 (Consequences for Failure to Comply with Quarantine Restrictions) and §19.178 (Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions) are adopted without changes to the proposed text as published in the Proposed Rules section of the May 24, 2024, issue of the *Texas Register* (47 TexReg 3669) and will not be republished.

The amendments include a change to Subchapter E's title from "Date Palm Lethal Decline" to "Lethal Bronzing of Palms Quarantine" to account for the new common name for the quarantined organism.

The amendments to §19.1 remove definitions for "certified regulated article," "non-certified regulated article," and "in-sect exclusionary cover," because these terms do not appear in this chapter; remove definitions for "Mediterranean fruit fly," "Oriental fruit fly," and "peach fruit fly" because these insects are not addressed in this chapter; remove the term "Mediterranean fruit fly" from the definition of "fruit fly" and add the term "Caribbean fruit fly" to the definition of "fruit fly" to address the specific types of fruit flies regulated in this chapter; remove a duplicative definition for "West Indian fruit fly;" and make the terms "phytosanitary certificate," "phytosanitary growing season inspection certificate," "quarantined area," "quarantined article," "quarantined pest," and "regulated article" lower-case because they appear as such in this chapter.

The amendments to §19.2 remove unnecessary language about the U.S. Domestic Japanese Beetle Harmonization Plan, update Department contact information, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The amendments to §19.3 make references to the United States Department of Agriculture the same as its definition in §19.1 and update Department contact information.

The amendments to §19.5 add Department contact in-formation for those wanting to obtain applications for phytosanitary growing season inspections.

The amendments to §19.23 make grammatical changes to language to improve the rule's readability.

Consistent with the change to Subchapter E's title, the amendment to §19.50 updates the name of the quarantined organism to "Lethal Bronzing of Palms" to account for its new name.

The amendments to §19.51 update out-of-state areas to the quarantined areas for lethal bronzing of palms and, consistent with the change to Subchapter E's title, update the name of the quarantined organism to "Lethal Bronzing of Palms" to account for its new name.

The amendments to §19.52 clarify that the definition of a quarantined article includes any species determined to be a vector of disease, updates the list and names of palms that are quarantined, and adds quarantined areas based on current information available.

The amendments to §19.60 clarify that the quarantined pest is a disease caused by *Candidatus Phytoplasma palmae* or phytoplasma 16SrIV-A.

The amendments to §19.61 update the out-of-state quarantined areas for Date Palm Lethal Decline.

The amendments to §19.62 clarify that the definition of a quarantined article includes any species determined to be a vector of disease, updates the list and names of palms that are quarantined, and adds quarantined areas based on current information available.

The amendments to §19.73 make a reference to the Department as "department" because the term "department" is generally used throughout Title 4, Part 1 and correct grammatical errors.

The amendments to §19.81 update Department contact information and a citation to the regulation of gypsy moths in the Code of Federal Regulations as well as make editorial changes to language to improve the rule's readability.

The amendments to §19.101 remove subsection (b) because the most recent list of quarantines areas provided through Code of Federal Regulations (CFR), Title 7, §301.81-3 includes all areas listed in that subsection, update a citation to 7 CFR §301.81-3, change the term "regulated areas" to "quarantined areas," as the former is the term found in 7 CFR §301.81-3, provide an additional means to access the federal imported fire ant quarantine, update contact information for the Department, and remove unnecessary language.

The amendments to §19.103 correct grammatical errors and make editorial changes to language to improve the rule's readability.

The amendments to §19.113 remove unnecessary language, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The amendments to §19.133 make header information in a subsection lower-case, as this is how such information generally appears in rules throughout Title 4, Part 1; add language clarifying time restrictions on planting sweet potatoes; update Department contact information; correct grammatical errors; and make editorial changes to language to improve the rule's readability.

The amendments to §19.170 remove unnecessary language; change an internal reference to this chapter from "title" to "chapter" as the former is generally used throughout Title 4, Part 1; and update a citation to the Code.

The amendments to §19.171 remove unnecessary language and make editorial changes to language to improve the rule's readability.

The amendments to §19.172 make the rule's title more concise, remove unnecessary and inapplicable language on sources of information on quarantined infested areas and core areas, make editorial changes to language to improve the rule's readability, specify a reference to the sapote fruit fly, correct grammatical and mathematical errors, and make all mentions of quarantined infested areas as "quarantined infested areas."

The amendments to §19.173 make the rule's title more concise, specify a reference to the sapote fruit fly, remove unnecessary language, and make editorial changes to language to improve the rule's readability.

The amendments to §19.174 specify a reference to the sapote fruit fly and correct a grammatical error.

The amendments to §19.175 change the language of the rule to align with §19.504 of this chapter (relating to Restrictions on Movement of Articles Subject to the Quarantine); remove unnecessary, inapplicable provisions for quarantined non-infested areas; and delete obsolete provisions involving fumigation protocols no longer in existence. The amendments further clarify and incorporate additional provisions requiring those who transport regulated articles to ensure that they do not become infested and that the quarantined pest is not spread.

The amendments to §19.176 update a reference to the United States Department of Agriculture.

The amendments to §19.616 correct the address of the Department's Valley Regional Office and remove reference of the citrus greening quarantine map being posted on the department's website.

The amendments to §19.622 correct the address of the Department's Valley Regional Office and remove unnecessary language.

The repeal of §19.91 is adopted to conform with 85 Fed. Reg. 61806 and the United States Department of Agriculture's (USDA) removal of its regulations pertaining to domestic pine shoot beetle quarantines and restrictions applying to the importation of pine shoot beetle host material from Canada, which include the regulations referred to in this rule.

The repeal of §19.177 is adopted to remove redundant language, which is identical to state statute namely, Sections 12.020, 71.009, 71.012, 71.013, 71.009, and 71.0092 of the Texas Agriculture Code (Code).

The repeal of §19.178 is adopted to remove redundant language identical to Section 71.010 of the Code.

The Department adopts new 4 TAC Part 1, Chapter 19, Subchapter Y, Cottonseed Bug Quarantine comprised of §§19.623 -19.626 to establish requirements and restrictions necessary to address dangers posed by the potential introduction of cottonseed bug in Texas.

New §19.623 defines the quarantined pest as the cottonseed bug.

New §19.624 defines the quarantined areas and outlines when the Department may designate additional or expanded quarantined areas.

New §19.625 defines what constitutes quarantined articles.

New §19.626 defines the travel restrictions for quarantined articles.

Public Comment

The Department received no comments regarding the proposed amendments, the proposed repeal, and the proposed new subchapter.

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §§19.1 - 19.3, 19.5

The amendments are adopted under Chapter 71 of the Texas Agriculture Code, which allows the Department to adopt rules necessary to administer this chapter.

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are further adopted under Section 12.021 of the Code, which requires the Department to collect inspection fees for phytosanitary inspections required by other states and foreign countries for agricultural products, processed products, or equipment exported from Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions are Chapters 12 and 71 of the Texas Agriculture Code.

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

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Susan Maldonado
General Counsel
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SUBCHAPTER B. BURROWING NEMATODE QUARANTINE

4 TAC §19.23

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Code, Section 71.005, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

§19.23. Restrictions.

(a) General. Plants, plant parts for propagation, and growing media originating from quarantined areas are prohibited entry into or through Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Plants produced from seed, planted and grown in sterile media or other suitable material determined by laboratory assay to be free of plant parasitic nematodes and protected from nematode infestation until shipped, are exempt from the provisions of this subchapter.

(c) Exceptions. Shipments from quarantined areas may enter Texas if each package or bundle is accompanied by a phytosanitary certificate issued by an authorized representative of the state or commonwealth of origin that:

(1) specifies the state or commonwealth of origin; and

(2) certifies that the quarantine plants, propagative plant parts, and growing media have been sampled and determined by laboratory assay to be free of burrowing nematodes not more than two months prior to shipment and protected from nematode infestation until shipped. A laboratory analysis report should accompany the shipment. Comingling of plant material from any other origin or source is prohibited unless the plant roots and growing media have been sampled and determined by laboratory assay to be free of burrowing nematodes.

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

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SUBCHAPTER E. LETHAL BRONZING OF PALMS QUARANTINE

4 TAC §§19.50 - 19.52

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.001 of the Code, which allows the Department to quarantine at the

boundaries of Texas an insect pest or plant disease the Department determines as dangerous that is new to and not widely distributed in Texas existing in any areas outside Texas; Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER F. LETHAL YELLOWING QUARANTINE

4 TAC §§19.60 - 19.62

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Texas Agriculture Code (Code), which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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SUBCHAPTER G. EUROPEAN BROWN GARDEN SNAIL QUARANTINE

4 TAC §19.73

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER H. GYPSY MOTH QUARANTINE

4 TAC §19.81

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER I. PINE SHOOT BEETLE QUARANTINE

4 TAC §19.91

The repeal is under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary. The repeal is further authorized under Section 71.005 of the Texas Agriculture Code (Code), which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the repeal is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101, §19.103

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.001 of the Code, which allows the Department to establish quarantines within Texas against out-of-state insect pests or plant diseases new to and not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE

4 TAC §19.113

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code.

The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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SUBCHAPTER M. SWEET POTATO WEEVIL QUARANTINE

4 TAC §19.133

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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SUBCHAPTER Q. SAPOTE FRUIT FLY QUARANTINE

4 TAC §§19.170 - 19.176

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under Section 71.001 of the Code, which allows the Department to quarantine an area if it determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area out-side the state; Section 71.002 of the Code, which allows the Department to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; and Section 71.007 of the Code, which allow the Department to adopt rules necessary for the protection of the state's agricultural and horticultural interests.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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Susan Maldonado
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For further information, please call: (512) 463-6591

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4 TAC §19.177, §19.178

The repeals are under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary. The repeals are further authorized under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant prod-

uct, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adopted repeals is Texas Agriculture Code, Chapter 71.

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

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SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §19.616, §19.622

The amendments are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further adopted under 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the adoptions is Chapter 71 of the Texas Agriculture Code.

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

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For further information, please call: (512) 463-6591

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SUBCHAPTER Y. COTTONSEED BUG QUARANTINE

4 TAC §§19.623 - 19.626

The new rules in Subchapter Y are adopted under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary, and Code, §§71.001 and 71.002, which authorizes the Department to establish quarantines against in-state and out-of-state diseases and pests; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles.

Chapter 71 of the Texas Agriculture Code is affected by the adoption.

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

Filed with the Office of the Secretary of State on November 22, 2024.

TRD-202405743
Susan Maldonado
General Counsel
Texas Department of Agriculture
Effective date: December 12, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 463-6591

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.6

The Texas Animal Health Commission (Commission) in a duly noticed meeting on November 12, 2024, adopted amendments to §40.6, concerning CWD Movement Restriction Zones. Section 40.6 is adopted without changes to the proposed text published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6345) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The purpose of this chapter is to prevent and control the incidence of chronic wasting disease (CWD) in Texas by seeking to reduce the risk of interstate and intrastate transmission of CWD in susceptible cervid species. The Commission adopts amendments to §40.6 to eliminate surveillance zones and add two new containment zones based on high-risk CWD exposure. These amendments will provide more targeted surveillance and reduce the risk of CWD being spread from areas where it may exist while eliminating unnecessary restrictions from other areas.

CWD is a degenerative and fatal neurological communicable disease recognized by the veterinary profession that affects susceptible cervid species. CWD poses a serious threat to live-

stock and exotic livestock that the Commission is charged with protecting. CWD can spread through natural movements of infected animals and transportation of live infected animals or carcass parts. Specifically, prions are shed from infected animals in saliva, urine, blood, soft-antler material, feces, or from animal decomposition, which ultimately contaminates the environment in which CWD susceptible species live. CWD has a long incubation period, so animals infected with CWD may not exhibit clinical signs of the disease for months or years after infection. The disease can be passed through contaminated environmental conditions and may persist for a long period of time. Currently, no vaccine or treatment for CWD exists.

The purpose of the movement restriction zones is to both increase surveillance and reduce the risk of CWD being spread from areas of high risk where it may exist. As required by §40.6(g), the Commission reviewed the movement restriction zones and recommends the modifications as stated herein.

HOW THE RULES WILL FUNCTION

The amendments to §40.6(a) eliminate the definition of "CWD Surveillance Zone (SZ)" and other references to surveillance zone throughout the definitions.

The amendment to §40.6(b)(1)(I) would add a new containment zone in Coleman County in response to the detection of CWD in a free-range white-tailed deer in that county.

The amendments to §40.6(b)(1)(J) would add a new containment zone in Collingsworth County in response to high-risk elk from an adjacent farm.

The amendments to §40.6(b)(2) would eliminate all surveillance zones.

The amendments to §40.6(d) would eliminate requirements associated with surveillance zones.

The amendments to §40.6(e) would eliminate carcass movement requirements for surveillance zones.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended September 22, 2024.

During this period, the Commission received comments from five individuals and a comment from the Texas Deer Association. A summary of comments relating to the rules and the Commission's responses follows.

Comment: Five individual commenters were generally supportive of the Commission's proposal to remove surveillance zones. One commenter noted that more targeted surveillance is still needed. Another commenter expressed that containment zones should be made as small as possible.

Comment: Texas Deer Association commented it supports elimination of surveillance zones but opposes the size of the proposed containment zones in Coleman and Collingsworth counties. TDA suggested the containment zone should be limited to the size of the property of detection.

Response: The Commission thanks the commenters and TDA for the feedback. The Commission declines to further amend the rule. No changes were made as a result of these comments.

STATUTORY AUTHORITY

The amendments to §40.6 within Chapter 40 of the Texas Administrative Code are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code.

The Commission is vested by statute, §161.041(a), titled "Disease Control," to protect all livestock, exotic livestock, domestic fowl, and exotic fowl from disease. The Commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, even if the agent of transmission is an animal species that is not subject to the jurisdiction of the Commission.

Pursuant to §161.0415, titled "Disposal of Diseased or Exposed Livestock or Fowl," the Commission may require by order the slaughter of livestock, domestic fowl, or exotic fowl exposed to or infected with certain diseases.

Pursuant to §161.0417, titled "Authorized Personnel for Disease Control," the Commission must authorize a person, including a veterinarian, to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Pursuant to §161.046, titled "Rules," the Commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power," Commission personnel are permitted to enter public or private property for the performance of an authorized duty.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product," the Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or non-communicable disease.

Pursuant to §161.049, titled "Dealer Records," the Commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer. The Commission may also inspect and copy the records of a livestock, exotic livestock, domestic fowl, or exotic fowl dealer that relate to the buying and selling of those animals. The Commission, by rule, shall adopt the form and content of the records maintained by a dealer.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception," the Commission, by rule, may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. The Commission is authorized, through §161.054(b), to prohibit or regulate the movement of animals into a quarantined herd, premises, or area. The executive director of the Commission is authorized, through §161.054(d), to modify a restriction on animal movement, and may consider economic hardship.

Pursuant to §161.0541, titled "Elk Disease Surveillance Program," the Commission, by rule, may establish a disease surveillance program for elk. Such rules include the requirement for persons moving elk in interstate commerce to test the elk for

chronic wasting disease. Additionally, provisions must include testing, identification, transportation, and inspection under the disease surveillance program.

Pursuant to §161.0545, titled "Movement of Animal Products," the Commission may adopt rules that require the certification of persons who transport or dispose of inedible animal products, including carcasses, body parts, and waste material. The Commission, by rule, may provide terms and conditions for the issuance, renewal, and revocation of a certification under this section.

Pursuant to §161.056(a), titled "Animal Identification Program," the Commission may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease. Section 161.056(d) authorizes the Commission to adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, titled "Classification of Areas," the Commission may prescribe criteria for classifying areas in the state for disease control based on sound epidemiological principals and may prescribe control measures for classification areas.

Pursuant to §161.058, titled "Compensation of Livestock or Fowl Owner," the Commission may pay indemnity to the owner of livestock or fowl if necessary to eradicate the disease.

Pursuant to §161.060, titled "Authority to Set and Collect Fees," the Commission may charge a fee for an inspection made by the Commission as provided by Commission rule.

Pursuant to §161.061, titled "Establishment," if the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or any agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The Commission may, through §161.061(c), establish a quarantine to prohibit or regulate the movement of any article or animal the Commission designates to be a carrier of a disease listed in Section 161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited for an animal into an affected area, including a county district, pasture, lot, ranch, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.0615, titled "Statewide or Widespread Quarantine," the Commission may quarantine livestock, exotic livestock, domestic fowl, or exotic fowl in all or any part of this state as a means of immediately restricting the movement of animals potentially infected with disease and shall clearly describe the territory included in a quarantine area.

Pursuant to §161.065, titled "Movement from Quarantined Area; Movement of Quarantined Animals," the Commission may provide a written certificate or written permit authorizing the movement of animals from quarantined places. If the Commission finds animals have been moved in violation of an established quarantine or in violation of any other livestock sanitary la w, the Commission shall quarantine the animals until they have been properly treated, vaccinated, tested, dipped, or disposed of in accordance with the rules of the Commission.

Pursuant to §161.081, titled "Importation of Animals," the Commission may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. The Commission, by rule, may provide the method for inspecting and testing animals before and after entry into this state, and for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report," a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the Commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the Commission within 24 hours after diagnosis of the disease.

Pursuant to §161.148, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates Chapter 161 or a rule or order adopted under Chapter 161. The penalty for a violation may be in an amount not to exceed $5,000.

The proposed rules in this chapter for adoption do not affect other statutes, sections, or codes.

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

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405657
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Effective date: December 10, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 839-0511

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TITLE 10. COMMUNITY DEVELOPMENT

PART 8. TEXAS SPACE COMMISSION

CHAPTER 321. GRANTS

10 TAC §321.1 - 321.16

The Texas Space Commission ("Commission") adopts without changes new 10 TAC §§321.1 - 321.16, relating to Grants. The Commission adopts new §321.1, concerning Definitions, §321.2, concerning Authority, §321.3, concerning Applicability, §321.4, concerning Funding; Availability of Funds, §321.5, concerning Notices, §321.6, concerning Eligible Recipients; Eligible Activities, §321.7, concerning Established Presence in the State, §321.8, concerning Application Process Generally, §321.9, concerning Application Requirements, §321.10, concerning Grant Evaluation, §321.11, concerning Amount of Grant Award; Payment Procedures, §321.12, concerning Reporting, §321.13, concerning Records Retention, §321.14, concerning Requests for Records; Audit, §321.15, concerning Noncompli-

ance; Failure to Perform, and §321.16, concerning Direct Award (49 TexReg 8448). These rules will not be republished.

REASONED JUSTIFICATION

House Bill 3447 (88-R) directed the Board of Directors ("Board") of the Commission to adopt rules regarding the procedure for awarding grants to an applicant under Chapter 482, Texas Government Code. In accordance with that directive, the Board unanimously voted to adopt the grant-making procedures detailed in this rulemaking.

Adopted new §321.1 establishes definitions the Commission and Board will utilize in its grant making process.

Adopted new §321.2 describes the authority under which the Commission may award grants.

Adopted new §321.3 describes the purposes for which grants may be awarded.

Adopted new §321.4 describes the sources of funding for grants and establishes that all grants are subject to the availability of funds and approval by the Commission. The rule also establishes that neither the rules in Title 10, Chapter 321, Texas Administrative Code, nor any grant agreement the Commission may enter with a grantee creates in a grantee any entitlement or right to grant funds.

Adopted new §321.5 establishes notice requirements, allowing for electronic notice.

Adopted new §321.6 establishes eligibility requirements related to eligible recipients and eligible activities.

Adopted new §321.7 requires grant recipients to be engaged in business in Texas.

Adopted new §321.8 establishes process requirements for grant applicants, including electronic submission.

Adopted new §321.9 establishes requirements for grant applications, including acceptable signatures.

Adopted new §321.10 establishes grant review process for the Board to consider an application.

Adopted new §321.11 establishes the Board as the sole entity permitted to set the grant award amount and establishes that the Commission is not required to fund any grant at the amount the grant applicant requests.

Adopted new §321.12 requires grant recipients to submit periodic reports and documentation in accordance with the grant agreement. This section also authorizes the Commission, upon reasonable notice, to request any additional information necessary to show that grant funds are being used for the intended purpose and that the grant recipient has complied with the grant agreement.

Adopted new §321.13 requires grant recipients to maintain all records regarding the grant project and provides records retention requirements.

Adopted new §321.14 describes requirements for providing records, documentation, or other information required by the Commission and authorizes the Commission, upon reasonable notice, to audit the activities of a grantee as necessary to ensure that grant funds are used for the intended purpose of the reimbursement award and that the grantee has complied with the terms, conditions, and requirements of the reimbursement award.

Adopted new §321.15 describes the process for addressing a grantee's noncompliance with any term or condition of a reimbursement award or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, and the remedies that could result from such noncompliance.

Adopted new §321.16 establishes the circumstances under which a grant may be directly awarded.

SUMMARY OF COMMENTS AND AGENCY RESPONSES

The Commission did not receive any comments in response to the proposed rulemaking.

STATUTORY AUTHORITY.

Section 482.501, Texas Government Code, directs the Commission to adopt rules regarding the procedure for awarding grants to an applicant under this chapter.

CROSS REFERENCE TO STATUTE

Chapter 482, Texas Government Code. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on November 18, 2024.

TRD-202405603
Norman Garza
Executive Directors
Texas Space Commission
Effective date: December 8, 2024
Proposal publication date: October 18, 2024
For further information, please call: (512) 463-8575

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.70

The Railroad Commission of Texas (Commission) adopts amendments to §3.70, relating to Pipeline Permits Required, without changes to the proposed text published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6559) and will not be republished. The Commission adopts the amendments in §3.70 to align with changes concurrently adopted in Chapter 8, relating to Pipeline Safety Regulations, which incorporate federal requirements. The 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 received six comments, five of which were from associations (Permian Basin Petroleum Association (PBPA), Pipeline Safety Trust, Sierra Club Lone Star Chapter (Sierra Club), Texas Industry Project, and Texas Oil and Gas Association (TXOGA)). One company, Atmos Energy Corporation's Mid-Texas Division and West Texas Division (Atmos) also commented. The Commission appreciates these comments.

Generally, Atmos commented that it supports the changes to §3.70, as they effectively remove outdated language, properly update the language regarding gathering lines, and provide a straightforward process for filing Form T-4B.

The Commission appreciates the comments from Atmos.

Regarding §3.70(i)(1)(A), TXOGA and PBPA sought clarity that Group A fees only apply to transmission and gathering pipelines, as defined by the Pipeline and Hazardous Materials Safety Administration (PHMSA), and would not include production lines defined in §8.1(a)(1)(B) of this title, relating to General Applicability and Standards.

The Commission notes that production pipelines covered under §8.1(a)(1)(B) currently fall under Group A, as defined by §3.70(i)(1)(A), and will continue to fall under Group A after these amendments.

The Commission received one comment from Sierra Club regarding increasing mileage fees for Group B operators under §3.70(i)(3), as well as the permit processing fee for all permitted pipelines under §3.70(j). Sierra Club suggested increasing the fee for Group B pipelines from $10 per mile to $15 per mile, and the permit processing fee from $500 to $1,000.

The Commission appreciates the comments from Sierra Club but acknowledges that the suggested fee increases are outside the scope of these amendments. The Commission did not propose changing Group B per mile fees, nor permit processing fees, and would need to propose these fee changes and allow public comments before considering any changes to either fee.

Regarding changes to §3.70(o), Sierra Club agrees with the Commission and supports the requirement of having both the transferor and transferee sign for ownership transfer, with some flexibility where the transferor operator failed to do so.

The Commission appreciates Sierra Club's comments.

Regarding §3.70(r)(1), the Commission received similar comments from TXOGA, PBPA, and Texas Industry Project. These associations proposed extending the deadline for amending T-4 permits to December 31, 2025, noting that it will be challenging for operators to file by March 31, 2025. PBPA also suggested that any future proposals to shapefile submission include opportunity for public comment and stakeholder feedback.

The Commission disagrees with the proposal to extend the deadline to December 31, 2025. The federal gathering line rule required all operators to begin filing annual reports starting in March 2023. As such, operators should have all necessary information. This data is needed to accurately enter new Type C gathering line systems into the Pipeline Inspection System (PIPES). Additionally, the Commission released a Notice to Operators on February 29, 2024 to make operators aware of the new shapefile requirements.

Additionally, regarding §3.70(r), PBPA proposed to revise the amended rule to exclude Type R pipeline operators from submitting shapefiles with T-4 permit requests, noting that this goes beyond PHMSA's requirements, many operators have stated that they utilize other methods, and may not have GIS centerline data.

The Commission disagrees with PBPA's proposal to exclude Type R operators from shapefile requirements under §3.70(r). The data requested in the shapefile submissions is required for operators to differentiate between Type C and Type R pipelines. Thus, §3.70(r) will be adopted as proposed.

The Commission appreciates the input received from commenters. The Commission makes no changes in response to these comments. The adopted rule language is summarized in the paragraphs below.

The Commission adopts amendments in §3.70(i)(1)(A) and (B) to incorporate federal categories of pipelines and to clarify reporting requirements. In the Commission's rulemaking to amend §8.1 of this title (relating to General Applicability and Standards), which is adopted concurrently with these amendments to §3.70, the Commission incorporates minimum safety standards from 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 amendments to §3.70(i) incorporate federal pipeline classifications and ensure gas gathering lines are regulated consistent with PHMSA's requirements.

The adopted 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 adopts 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 adopts a similar process in subsection (o) because this situation also occurs with pipeline transfers.

The Commission adopts new subsection (r) to require updates in the permitting system related to gas gathering pipelines, indicating the federal categories as adopted in subsection (i). The 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 adopts 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 adopts 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.

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

Filed with the Office of the Secretary of State on November 19, 2024.

TRD-202405612
Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
Effective date: December 9, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas adopts 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. Sections 8.1, 8.115, and 8.209 are adopted with changes to the proposed text published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6652) and will be republished. The remaining rules are adopted without changes and will not be republished. The Commission adopts 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 received six comments, four of which were from associations (Permian Basin Petroleum Association (PBPA), Pipeline Safety Trust, Sierra Club Lone Star Chapter (Sierra Club), and Texas Oil and Gas Association (TXOGA)). Two companies, Atmos Energy Corporation's Mid-Texas Division and West Texas Division (Atmos) and Texas Gas Service (TGS) also commented. The Commission appreciates these comments.

Regarding the amendments proposed in §8.1(a)(1)(B), PBPA and TXOGA commented that PHMSA regulations in 49 CFR §192.8 associate Type C facilities only with Class 1 locations. Thus, the Commission should remove Type C from §8.1(a)(1)(B).

The Commission agrees and adopts §8.1(a)(1)(B) with a change to remove "Type C."

In addition, PBPA and TXOGA requested clarification regarding the meaning of "first point of measurement" in §8.1(a)(1)(B). TXOGA suggested that "first point of measurement" be defined as a measurement which occurs after final processing, before transportation to a third party for sales. TXOGA also suggested that the Commission exempt measurement methods utilizing allocation meters, multi-phase flow meters, bulk separation/test meters, and well performance surveillance meters associated with production operations and prior to final separation and processing at central tank batteries.

The Commission notes that "first point of measurement" is the first point of measurement required under §3.27 of this title, relating to Gas to be Measured and Surface Commingling of Gas. The Commission disagrees that the definition should exempt the measurement methods proposed by TXOGA. Section 8.1(a)(1)(B) was added to the chapter in 2009 to address the regulation of production pipelines located in more populated areas (Class 2, 3, and 4 locations). This section continues to apply only to production pipelines in Class 2, 3, and 4 locations and includes the entirety of the pipeline that is located in a Class 2, 3, or 4 location.

PBPA requested clarification regarding whether "Group A" fees are only applicable to PHMSA-defined transmission and gathering pipelines and do not apply to production lines defined in §8.1(a)(1)(B).

The Commission makes no change in response to this comment. Production pipelines covered under §8.1(a)(1)(B) are subject to the regulations in 49 CFR Part 192 and require inspections. They are currently subject to Group A fees and Group A fees will continue to apply.

The Commission received three comments on its proposed changes to §8.1(b), which update the minimum safety standards and 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. PBPA expressed support for the proposed amendments. Sierra Club also expressed support but noted the Commission should have acted sooner to incorporate the federal standards. Atmos requested clarification regarding whether the change will incorporate rules finalized by PHMSA by December 9, 2024, but not effective by December 9, 2024, such as the leak detection and repair rulemaking.

The Commission confirms that the leak detection and repair (LDAR) rulemaking is not incorporated by reference. The federal rules that are incorporated into §8.1(b) as of December 9, 2024 (the effective date of these rule amendments) are the rules resulting from the rulemakings listed in the Commission's preamble to the proposed amendments published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6652). Those rulemakings are also listed below in the paragraph summarizing the amendments to §8.1(b).

In §8.101, the Commission proposed changes to clarify which pipelines referenced in 49 CFR Part 195 are subject to the rule's requirements. The amendments also align Texas integrity rules with the federal requirements and state that operators of pipelines subject to 49 CFR §192.710 shall follow the remediation requirements.

Atmos commented in support of the proposed amendments to §8.101. The Commission appreciates this comment.

PBPA and TXOGA requested that the title of Figure 2 in §8.101(b)(2) be revised from "Liquid Pipelines" to "Liquid Pipelines Subject to 49 CFR Part 195 Requirements." The commenters noted that the Commission generally requires that interstate, rural, non-regulated systems be permitted. Non-regulated systems that are permitted should not also be subject to Pipeline Integrity Assessment and Management Plans in §8.101. This is stated in proposed rule language and for consistency should also be clearly referenced in the title of Figure 2.

The Commission declines to make this change. The applicability of the section to pipeline facilities used in the transportation of hazardous liquids or carbon dioxide subject to 49 CFR Part 195 is stated in subsection (b) and an additional change to the figure is unnecessary. In addition, updating the title of this figure would create inconsistency with other figures in Chapter 8, some of which were not included in this proposal.

The Pipeline Safety Trust commented that the reassessment interval of ten years for natural gas and hazardous liquids pipelines is too long. Conditions can change quickly over a decade, and frequent assessment is needed to ensure operators are repairing and monitoring their pipelines effectively. The Pipeline Safety Trust suggested that the Commission change the requirement for reassessment intervals to not exceed five years for both §8.101(b)(1)(F)(i) and (ii).

The Commission declines to make the requested change because the Commission does not support decreasing the interval to five years without first seeking input from affected operators. Changing the interval from every ten years to every five years would create a significant cost for operators, and they should have an opportunity to comment. The Commission will consider the Pipeline Safety Trust's suggestion in assessing future changes to §8.101.

Regarding amendments proposed in §8.115, Atmos commented that it has worked with the Pipeline Safety Division since 2020 to improve reporting on construction projects. Based on those filings, Atmos believes the intent of new subsection §8.115(a)(6) is to require reporting on projects less than three miles in length only if the project results in a new distribution system ID. To clarify the language further, Atmos suggested that "10" be replaced with "3" in subsection (a)(6) and the language relating to a new subdivision be removed. Also, Atmos suggested a change to §8.115(b) to clarify that extension requests should be made by emailing PS-48Reports@rrc.texas.gov.

The Commission agrees with Atmos's suggestions and adopts §8.115 with changes based on Atmos's comments. The Commission incorporates Atmos's suggestions into §8.115(a)(5) and moves existing language from subsection (a)(5) relating to systems at least three miles in length but less than ten miles in length to subsection (a)(6). With this change, adopted subsection (a)(5) will address systems less than three miles in length and subsection (a)(6) will address those at least three miles but less than ten miles.

Sierra Club also commented on the proposed amendments to §8.115. Sierra Club expressed support for the requirement for a new liquefied natural gas (LNG) plant or LNG facility construction to notify the Commission not later than 60 days before beginning construction. Sierra Club disagreed that a reporting exemption should be provided to facilities less than three miles in length and recommended this exemption be removed.

The Commission disagrees and declines to remove the exemption. The Commission notes that due to the clarifying changes adopted in §8.115(a)(5) and (a)(6), if construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than three miles in length results in a new distribution system ID, the operator is subject to a reporting requirement. Thus, the exemption only applies when construction is less than three miles in length and does not result in a new distribution system ID. The requirements in §8.115 are intended to ensure the Commission receives notification of large replacement projects for inspection. While operators are not required to report smaller replacement projects, the Commission still performs inspections for smaller replacement projects.

Atmos commented in support of the amendments to §8.125. The Commission appreciates this comment.

Atmos also commented in support of the amendments to §8.201, as long as the payment system can capture large amounts.

The Commission performed testing to ensure the payment portal can capture large amounts.

The Sierra Club commented expressing support for the updates in §8.208. However, Sierra Club opposes the removal of a mandatory reporting requirement in favor of a requirement to maintain records. Sierra Club stated it believes it is better public policy for the operators to report annually to the division on their efforts to replace compression couplings.

The Commission declines to make changes in response to this comment. Since the implementation of §8.208, operators have completed the replacement of all known compression couplings that required removal. However, the Commission will still inspect facilities for compliance with §8.208 during standard comprehensive inspections.

Atmos and TGS commented regarding the proposed amendments to §8.209(j), which were intended 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. The comments state that operators have calculated and applied interest in accordance with the rule and on a consistent basis since the rule's original adoption. Atmos provided more information regarding the methodology of the calculation, which records simple interest on the balance of the designated regulatory asset accounts using a monthly interest rate equal to one twelfth of the pre-tax weighted average cost of capital last approved by the Commission for each division. Atmos expressed support for a modification to the proposed language to clarify that methodology.

The Commission adopts §8.209 with changes to address these concerns. The language adopted in subsection (j)(1)(C) will allow the operator to record simple interest on the balance in the designated distribution facility replacement accounts using a monthly interest rate equal to one-twelfth of the pre-tax weighted average cost of capital last approved for the utility by the Commission.

Atmos and the Pipeline Safety Trust commented in support of the proposed amendments to §8.210(e). Sierra Club also expressed support, stating the amendment was a welcome and needed change. The Commission appreciates these comments.

The Pipeline Safety Trust commented suggesting the Commission include additional reporting requirements for estimated leak volume. The comment stated including estimated leak volume will allow the Commission to obtain more information regarding the impact of the leaks, and may help inform other state agen-

cies, such as the Texas Commission on Environmental Quality, on leak impacts.

The Commission declines to include estimated leak volume at this time. PHMSA's pending leak detection and repair rule may impact Commission requirements in §8.210. Thus, the Commission will wait to consider further changes to §8.210 until PHMSA's rule is finalized.

The Commission appreciates the input from all those who submitted comments.

The adopted rule language is summarized in the paragraphs below.

The Commission adopts amendments to §8.1(a)(1)(B) to clarify the requirements for gas production lines located in populated areas. As stated above, the Commission adopts §8.1(a)(1)(B) with a change to remove Type C pipelines based on the comments. The amendments in §8.1(a)(1)(B) also impact current requirements under §3.70, relating to Pipeline Permits Required. The Commission adopts amendments to §3.70 concurrently to these amendments to rules in Chapter 8.

The Commission adopts 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 adopts 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 effective date of the rule amendments, to capture the following federal PHMSA pipeline safety rule amendments: Docket No. PHMSA-2011-0023: Amdt. Nos. 191-30 and 192-129, revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas gathering pipelines effective May 16, 2022; Docket No. PHMSA-2011-0023: Amdt. Nos. 191-31 and 192-131, effective May 16, 2022, 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" and making clarifications and two technical corrections to that rulemaking; Docket No. PHMSA-2013-0255: Amdt. Nos. 192-130 and 195-105, revising 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; Docket No. PHMSA-2013-0255: Amdt. Nos. 192-134 and 195-106, effective August 1, 2023, making 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; Docket No. PHMSA-2011-0023: Amdt. No. 192-132, amending the federal pipeline safety regulations in 49 CFR Part 192 to improve the safety of onshore gas transmission pipelines effective May 24, 2023; Docket No. PHMSA-2011-0023: Amdt. No. 192-133, also effective May 24, 2023, making 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"; and Docket No. PHMSA-2016-0002, Amdt. Nos. 192-135, 195-107, amending 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, effective June 28, 2024.

The Commission adopts amendments in §8.1(b)(3) to align the rule text with federal exemptions allowed under 49 CFR §199.2(c)(1).

The Commission adopts several amendments in §8.101. First, the amendments 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 adopts amendments in §8.101(b)(1)(C) and (b)(1)(F) to align state integrity rules with the federal requirements. Amendments 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 adopts 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 amendments incorporate the newer terminology consistent with federal rules.

The Commission adopts amendments to §8.115 with changes from the proposal. Section 8.115 requires operators of liquefied natural gas (LNG) facilities to report the construction of a new LNG plant or LNG facility to the Commission. The Commission adopts amendments in current §8.115(a)(4), renumbered as paragraph (5), to clarify that 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. However, new construction for systems less than three miles in length is required to be reported if the construction results in a new distribution system ID. The Commission adopts paragraphs (5) and (6) with changes to better reflect the intent of reporting requirements. Amendments 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 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. Section 8.115 is adopted with another change to specify how to file a request for an extension.

The Commission adopts 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 in subsection (e) require that a notice of a waiver application include the divi-

sion's email address in addition to other required contents. Similarly, amendments 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 adopts amendments to §8.201(b)(2) and (c)(1) to require payments through the Commission's online application for inspections and permits, PIPES.

The Commission adopts 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 adopts an amendment in §8.209(a) to clarify that 49 CFR §192.1003(b) may provide an exemption. The Commission also adopts 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. The Commission adopts §8.209 with changes based on comments from Atmos and TGS. The language adopted in subsection (j)(1)(C) will allow the operator to record simple interest on the balance in the designated distribution facility replacement accounts using a monthly interest rate equal to one-twelfth of the pre-tax weighted average cost of capital last approved for the utility by the Commission.

The Commission adopts 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.

The Commission adopts 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.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

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 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 production pipelines and production facilities shall be subject to 49 CFR §192.8(c) in determining if these pipelines and facilities are Type A or Type B and are subject to the rules in 49 CFR §192.9 for Type A or Type B pipelines;

(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.

(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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 19, 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

SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.110, 8.115, 8.125

The Commission adopts 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.

§8.115. 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) Except as provided in paragraphs (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) 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) 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 unless new construction results in a new distribution system ID. If the construction results in a new distribution system ID, the operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 New Construction Report 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. These monthly reports shall be filed by email to PS-48Reports@rrc.texas.gov.

(6) 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 New Construction Report 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.

(7) 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) Pipelines subject to §8.110(a)(2) and (3) 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) 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 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. Extension requests shall be made by emailing PS-48Reports@rrc.texas.gov. After one extension, the Form PS-48 will expire.

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

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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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SUBCHAPTER C. REQUIREMENTS FOR GAS PIPELINES ONLY

16 TAC §§8.201, 8.208 - 8.210

The Commission adopts 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.

§8.209. Distribution Facilities Replacements.

(a) Unless exempted by 49 CFR §192.1003(b), 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 using a monthly interest rate equal to one-twelfth of the pretax weighted average cost of capital last approved for the utility by the Commission;

(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.

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

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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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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.114

The Public Utility Commission of Texas (commission) adopts new §25.114, relating to Registration of Virtual Currency Mining Facilities, with changes to the proposed text as published in the September 13, 2024, issue of the *Texas Register* (49 TexReg 7173). The adopted rule implements Public Utility Regulatory Act (PURA) §39.360 as enacted by Senate Bill (SB) 1929 from the 88th Texas Legislature (R.S.). The new rule establishes a process for the registration of virtual currency mining facilities in the Electric Reliability Council of Texas (ERCOT) region. Specifically, the rule requires a registrant to provide information to the commission annually about its virtual currency mining facility's location, owners, form of business, and demand for electricity. Additionally, the adopted rule provides that the commission will share the registrants' information with ERCOT. The rule is adopted in Project No. 56962. The rule will be republished.

The commission received comments on proposed new §25.114 from ERCOT, MARA Holdings, Inc. (MARA), Satoshi Energy, Texas Blockchain Council (TBC), Texas Electric Cooperatives, Inc., (TEC), Texas Industrial Energy Consumers, (TIEC), and Vistra Corp. (Vistra).

General comments

MARA requested the commission develop a standardized form for registration.

Commission Response

The commission agrees and will make a standardized online registration form available on its website.

Vistra recommended that the commission restart the rulemaking process and withdraw the proposed rulemaking. Vistra claimed that the proposed rule fails to give effect to PURA §39.360, which requires the commission to establish generally applicable large flexible load registration requirements.

Commission Response

The commission disagrees that the rule fails to give effect to PURA §39.360. Although the statute requires the registration of a virtual currency mining facility as a large flexible load, the statute is silent on the characteristics of a large flexible load and whether other entities should be required to register as such

at this time. However, the statute unambiguously requires the registration of virtual currency mining facilities. Accordingly, the commission declines to withdraw the proposed rule, as recommended by Vistra.

Satoshi Energy recommended the addition of three items into the registration rule. First, the commission should develop rules to ensure there is a process for attributing how much of a load is dedicated to virtual currency mining, allowing for updates at regular intervals. Second, a load should not be required to register as a virtual currency mine unless its electric consumption constitutes a substantial portion (equal to or more than 50 percent) of the total load consumption of the load facility. Third, a deregistration process should be established for virtual currency mining loads that are repurposed for other types of consumption.

Commission Response

The commission declines to modify the rule to establish a process for determining how much of a load is dedicated to virtual currency mining or to only require registration of facilities with a substantial portion of load dedicated to virtual currency mining. As required by PURA §39.360, registration is required for virtual currency mining facilities that have a total load of more than 75 megawatts (MWs) and that have an interruptible facility load. Further, PURA defines a virtual currency mining facility as "a facility that uses electronic equipment to add virtual currency transactions to a distribution ledger." Since it is the statute, not commission rule, that establishes this registration requirement, the commission cannot, by rule, exempt a facility that meets that definition from the commission's registration requirement.

However, because the commission recognizes that the purpose of the statute is to provide the commission and ERCOT with information for reliability purposes, the commission interprets interruptible facility load to mean that a facility must have at least 10 percent interruptible load to be required to register - it is the interruptibility of the load that is directly relevant for reliability. While not all interruptible load is necessarily related to virtual currency mining, this at least ensures that a small amount of virtual currency mining would not result in a facility that is largely not interruptible having to register.

The commission also declines to modify the rule to include a deregistration process. If a virtual currency mining load is repurposed for another type of consumption, then the facility operator may allow its registration as a virtual currency mining facility to lapse, and it would then no longer be registered. An entity may also be able to relinquish its registration as an "update" under the rule, depending upon the functionality of the online registration tool. However, this is a practical question that is not appropriately addressed in codified rule text.

TIEC recommended the addition of a new subsection that would require ERCOT to issue a market notice concerning the registration requirements under proposed §25.114 to all load serving entities (LSEs) within ten days of the rule's effective date. Additionally, TIEC's new subsection (g) would require LSEs to notify any new or existing customers that have a load of greater than 50 MWs, or may otherwise qualify as a virtual currency mining facility, of the new registration requirements.

Commission Response

The commission declines to modify the rule to require ERCOT to issue a market notice alerting LSEs of the new registration requirements. The commission may direct commission staff to work with ERCOT to issue a market notice without codifying the requirement in rule. The commission also declines to modify the rule to require LSEs to notify customers with a load of greater than 50 MWs of these requirements because this would impose burdens on entities to which this rule does not apply. LSEs were also not provided notice and an opportunity to comment on this potential burden in this rulemaking proceeding. Customers with a load of 50 MWs or greater are sophisticated entities that can reasonably be expected to monitor potential upcoming requirements - especially those that are directly required by legislation and were implemented as part of a rulemaking that was properly noticed under the Texas Government Code and on the commission's website.

MARA and TBC expressed concern for the safeguarding of confidential and proprietary information required in the registration. Both requested that the rule be amended to explicitly identify the information provided as confidential and proprietary while also providing robust protection of this information.

Commission Response

The commission declines to modify the rule in response to address confidentiality, as requested by MARA and TBC. The registration information will be collected via an internal-facing online tool that will not be accessible to the public. Furthermore, the majority of information being collected is already publicly available in various locations. However, neither the commission nor ERCOT will disclose competitively sensitive or proprietary information unless legally required to do so.

Proposed §25.114(a) - Registration required

Proposed subsection (a) requires a virtual currency mining facility to register as a large flexible load if it requires a total load of more than 75 MW and the facility's interruptible load equals 10 percent or more of the actual or anticipated annual peak demand of the facility with ERCOT. Proposed subsection (a) also requires registration for any virtual currency mining facility that meets the requirements and that began receiving retail electric service prior to the effective date of this rule. Proposed subsection (a) requires registration by February 1, 2025, for a facility that began receiving retail electric service prior to the effective date of this rule.

Sierra Club recommended that the commission encourage virtual currency mining facilities under 75 MW to register as additional facilities would provide important additional information to the commission. MARA disagreed with Sierra Club's recommendation and requested that proposed §25.114 not be changed to add this language.

Commission Response

The commission declines to modify the rule to require or encourage registration of virtual currency mining facilities with fewer than 75 MWs of load, as requested by Sierra Club. The statute does not contemplate the inclusion of a facility with a load below 75 MWs, and it would be administratively cumbersome for commission staff to manage additional, patchwork data that is not required to be regularly updated. Furthermore, since the statute requires registration as "large flexible load," having smaller loads in the dataset may lead to confusion in the future.

MARA requested that the registration requirement for facilities with at least 10 percent interruptible load be deleted from the rule because such a threshold exceeds the authority granted by PURA §39.360 and "complicates the straightforward statutory framework." MARA argued that the statute only requires regis-

tration for facilities "that have a total load of more than 75 MW of interruptible load."

Commission Response

The commission disagrees with MARA's assertion that including the 10 percent interruptible load threshold as a registration criterion exceeds the commission's statutory authority. The statute requires the commission to "adopt criteria for determining whether a load is interruptible for the purposes of this section based on whether it is possible for the facility operator to choose to interrupt the load" and requires the operator to register a facility if "the facility load is interruptible." The commission gives effect to these requirements by adopting a definition of interruptible load that applies specifically to the portion of a facility's load that is interruptible because it is only this portion of the load that a facility operator can choose to interrupt. Very few, if any, facilities are completely interruptible, so to distinguish whether a "facility load is interruptible," the commission determines that a facility with 10 percent interruptible load is interruptible for purposes of the registration requirements under this rule.

The commission disagrees with MARA's assertion that the statute only requires registration of facilities "that have a total load of more than 75 MW of interruptible load." The issue with this statutory interpretation is evident from the ambiguity of MARA's own phrasing. Does the 75 MW threshold apply to the "total load" of the facility or the "interruptible load"? If the legislature had intended it to apply to the interruptible load, it could have easily expressed this intent by requiring registration of facilities "with 75 MWs of interruptible load." Instead, it established two separate requirements. First, that the total load of the facility be 75 MWs, and second, that the facility load be interruptible. Accordingly, it is appropriate - and in fact necessary - for the commission to determine how much of a facility's load is interruptible for purposes of this statute. The commission sets that threshold at 10 percent.

Additionally, MARA asserted that proposed §25.114 requires "retroactive registration" because the rule requires registration of any virtual currency mining facility that began receiving retail electric service prior to the effective date of this rule, and that retroactive application of the law would raise significant contractual and constitutional concerns. Accordingly, MARA requested that the portion of the rule that requires registration for any facility in operation prior to the effective date of the rule be removed.

Commission Response

The commission declines to modify the rule to remove the requirement for existing facilities to register under the rule, as requested by MARA. No contractual relationships will be affected by adoption of this rule. The rule only requires that virtual currency mining facilities, many of which are already in operation and have an impact on reliability in this state, register with the commission as large flexible loads. No other requirements are imposed on these entities and, in fact, failure to register does not even impede a virtual currency mining facility's ability to operate. It merely subjects the entity to an administrative penalty for failure to register.

Vistra recommended that proposed subsection (a) be modified to extend the registration deadline for registrants that began receiving retail electric service prior to the effective date of this rule to 90 days after the effective date of the rule.

Commission Response

The commission declines to extend the deadline to register, as requested by Vistra. The registration requirements under this rule are not burdensome and should not be difficult to comply with in a timely fashion. ERCOT recommended that subsection (a) be modified to specify that virtual currency mining facilities operating in the ERCOT region "at either transmission or distribution voltage" are required to register with the commission as large flexible loads.

Commission Response

The commission agrees with ERCOT's recommendation and modifies the rule accordingly. This addition clarifies the intent to capture all applicable virtual currency mining facilities, regardless of whether the load is interconnected at transmission- or distribution-level voltage.

Proposed §25.114(b) - Definitions

The proposed language for subsection (b) defines "interruptible load" as "the portion of the facility's load that the facility operator can choose to interrupt due to locational marginal prices, load zone prices, response to the ERCOT coincident peak demand for the months of June, July, August and September (4CP), or due to external grid conditions."

MARA requested that the proposed definition of "interruptible load" be modified and instead defined as load that can be ramped up or down by a facility's operator within 15 minutes, or at ERCOT's request, without violating any existing agreements or contracts.

Commission Response

The commission disagrees and declines to modify the rule as requested by MARA. The proposed definition is based on the statutory requirement that interruptibility be based on whether it is possible for the facility operator to choose to interrupt the load. The commission consulted with ERCOT to enhance the statutory definition by reflecting the circumstances in which virtual currency mining facilities interrupt their load, based on observed consumption and known business models. This definition of interruptible load provides reasonable and objective criteria for identifying the characteristics of virtual currency mining facilities that should trigger the statutory registration requirement.

Sierra Club requested that a definition of "controllable load resource" (CLR) be added to the rule.

Commission Response

The commission disagrees and declines to modify the proposed rule to include a definition of CLR, as requested by Sierra Club, because that term does not appear in the rule. Sierra Club's requested language that would use this term is addressed below.

Proposed §25.114(c) - Registration requirements

Proposed subsection (c) states the information that registrants must provide to the commission, including legal business name, mailing address, electronic mailing address, and form of business.

Sierra Club recommended modifying proposed subsection (c) to add the following requirements: whether the facility has registered as a resource entity with ERCOT, whether it has registered as a CLR, and whether it has participated or expects to participate in ancillary services available to loads.

Commission Response

The commission disagrees and declines to modify the proposed rule as recommended by Sierra Club because the suggested additions are unnecessary. ERCOT already has information about which entities have registered as a resource entity or CLR with ERCOT and which entities are eligible to participate in ancillary services programs. Furthermore, the commission does not need, for its own purposes, this information at the time a virtual currency mining facility registers as a large flexible load. The commission can obtain this information from ERCOT as needed.

MARA requested that all references to "virtual currency mining facility" be replaced with "large flexible load" in all of subsection (c).

Commission Response

The commission disagrees and declines to modify the rule as requested by MARA because the language in the proposed rule follows the statutory language, which refers to "virtual currency mining facilities," not all "large flexible loads."

Proposed §25.114(c)(1)

Proposed subsection (c)(1) requires a registrant to provide its legal business name, corporate parent, the registrant's principals, and all business names used by the facility.

MARA asserted that several of the registration requirements under proposed subsection (c)(1) were excessive or redundant. Specifically, MARA commented that requiring a registrant to disclose all business names is excessive, especially if the registrant operates under multiple business names. Additionally, MARA asserted that requiring a registrant to list the names of its principals is redundant because proposed subsection (c)(3) requires a regulatory contact.

Commission Response

The commission disagrees with MARA's comment that the proposed registration requirements are excessive and declines to modify the rule. To adequately identify virtual currency mining facilities, this identifying information is necessary. Historically, the information provided to ERCOT regarding virtual currency mining facilities has been limited to a subset of large virtual currency mining facilities and has resulted in a lack of visibility around ownership or operation of these facilities being transferred to another entity. This part of the registration requirement will assist ERCOT in identifying these operators more readily. Furthermore, PURA requires the commission to ensure compliance with these registration requirements. Having access to information such as active business names will allow the commission to quickly identify whether an identified business has already registered without having to actively attempt to identify the entity associated with a name to determine if it has registered and in the commission's records.

Proposed §25.114(c)(5)

Proposed subsection (c)(5) requires registrants to provide the commission with information that is on file with the Texas Secretary of State.

MARA stated that the requested information in proposed subsection (c)(5) is burdensome and of "questionable value" to the commission. MARA recommended that the commission work directly with the Texas Secretary of State to confirm a registrant's business standing, rather than requiring that the registrant submit information to the commission that they have already submitted to the Texas Secretary of State. MARA recommended that proposed subsection (c)(5) be deleted entirely but also provided alternative redlines to modify the language instead.

Commission Response

The commission disagrees with MARA's assertion that the requested information in proposed subsection (c)(5) is of "questionable value" to the commission. To fully and efficiently identify virtual currency mining facilities, an evaluation of business standing in the state of Texas is necessary. Historically, the information available to the commission and ERCOT regarding virtual currency mining facilities has been limited to a subset of large virtual currency mining facilities and has resulted in a lack of visibility when ownership and operation of these facilities is transferred between entities. In addition, given the many possible names under which a facility operator could be operating, the registrant has much easier access to information it has submitted to the Texas Secretary of State than the commission does.

Proposed §25.114(c)(6)

Proposed subsection (c)(6) lists the information that a registrant must provide for each virtual currency mining facility it operates.

MARA requested that every requirement under proposed subsection (c)(6) be deleted from the rule, except for (A) and a slightly modified version of (F). Specifically, MARA's redlines would remove the following disclosure requirements: the identity of the property owner and lessor or facility host; the size of the facility and an infrastructure description; the names of the facility's transmission and distribution service providers; the percentage of site load that constitutes interruptible load under the section; the actual peak load and total power consumption for the prior year; and if applicable, details on the facility's on-site backup generation. MARA stated that the listed requirements are too detailed, go beyond the requirements of SB 1929, and offer "little information of value" to the commission.

Commission Response

The commission declines to modify the rule to remove detailed registration requirements, as requested by MARA. The proposed rule requires provision of registration information necessary for the commission and ERCOT to adequately identify, communicate with, and understand consumption and anticipated load growth attributable to large virtual currency mining facilities. The proposed rule is consistent with the purpose and the scope of the statute.

ERCOT recommended that proposed subsection (c)(6)(H) be amended to clarify that the disclosure requirement for actual peak load applies if a facility took retail electric service at any time in the previous calendar year.

Commission Response

The commission agrees that the applicability of proposed (c)(6)(H) could be clarified with the language suggested by ERCOT and modifies the rule accordingly.

Vistra recommended editing proposed subsection (c)(6)(I) to include self-generators, those served directly by a power generation company inside of a private-use network or other co-located netting arrangement.

Commission Response

The commission declines to modify the proposed rule, as requested by Vistra, to include self-generators and those served directly by a power generation company inside of a private use network or other co-located netting arrangement. Instead, the com-

mission removes subsection (c)(6)(I) to more closely align the required information with the statutory text and reduce the burden of compliance on registrants. Proposed §25.114(c)(7)(A)-(C) Proposed paragraph (c)(7) requires registrants to include an affidavit signed by a representative with binding authority over the registrant asserting that the registrant is authorized to conduct business in Texas, the statements made in the registration are true and accurate, material changes will be reflected in a timely manner, and that the registrant understands and will comply with Texas law.

MARA recommended modifying proposed subsection (c)(7) to only require an affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant, to affirm that "the information provided in the registration is accurate to the best of their knowledge."

Commission Response

The commission disagrees and declines to modify the proposed rule to only require a general affirmation by an authorized individual that the registration is accurate to the best of their knowledge. The requirement that affiants affirm that the registration details are "complete and correct" is consistent with other commission rules, such as §25.112, relating to Registration of Brokers, which requires an affirmation that all statements in the application are "true, correct, and complete." Moreover, the nature of the information required for this registration is objective and should not be difficult to verify.

The other required affidavit contents are neither redundant nor excessive and facilitate the implementation of the registration program required by statute. For instance, updated information is important, and requiring an affirmation that updated information will be provided in a timely manner is necessary to ensure that an authorized representative of the registrant is actively aware of this requirement and acknowledges that these updates will occur. The broker registration rule contains a similar provision. Furthermore, customers with large loads often have interactions their transmission and distribution service providers. Given that registrants are facilities with a total load exceeding 75 MWs, requiring the registrant to communicate its compliance with the rule to its service provider is reasonable. Such notice would benefit large load planning and integration processes in the ERCOT region by ensuring that registrant information is complete and up to date.

Proposed §25.114(c)(7)(D)

Proposed subsection (c)(7)(D) requires the registrant to swear or affirm that it has notified its transmission and distribution service provider of its compliance with this section. Vistra recommended modifying proposed subsection (c)(7)(D) to require registrants to also notify retail electric providers (REPs) and any power generation company inside of a private-use network or other co-located netting arrangement. Vistra asserted that an entity, or entities, with a direct contractual relationship with a virtual currency mining facility has a vested interest in understanding whether their customer is compliant with commission requirements.

Commission Response

The commission disagrees with Vistra's assertion that proposed subsection (c)(7)(D) should be expanded to require contact between virtual currency mining facilities and their contracted business partners and declines to modify the rule accordingly. The purposes of the statute and this rule are to create and maintain a registry of virtual currency mining facilities at the commission and for the associated registration information to be shared with ERCOT. Notice to transmission and distribution service providers is also appropriate for reliability purposes. If REPs or other entities with contractual relationships with the virtual currency mining facility are interested in this information, they can seek to obtain it directly from their business partners.

Proposed §25.114(d) - Update of registration

Proposed subsection (d) requires a registrant to file an updated registration with the commission within 30 days of a change to the information required by subsection (c).

MARA suggested that all references to "virtual currency mining facility" in this subsection be replaced with "large flexible load" and suggested modifying the provision to only require updates when there is a "material change," rather than any change. MARA recommended that material changes include changes to contact information, "significant" expansions of load beyond that originally registered, and changes to the facility's ability to curtail or interrupt load.

Commission Response

The commission disagrees and declines to modify the rule to refer to "large flexible loads" because the language in the adopted rule follows the statutory language, which refers specifically to "virtual currency mining facilities." Regarding only requiring updates for material changes, "material change" is an imprecise term that could lead to confusion as to which changes are material (e.g., what constitutes a "significant" expansion of load). Furthermore, the nature of the information required should not change frequently enough to be unduly burdensome on registrants.

To provide internal consistency throughout the rule, the commission revises subsection (c)(7)(C) to require an affidavit affirming that any changes, rather than material changes, will be provided in a timely manner.

Proposed §25.114(e) - Registration renewal

Proposed subsection (e) requires a registrant to renew its registration on or before March 1 of every calendar year. A registrant must update its information either by submitting all of the information required by subsection (c) or by submitting a statement that all of its information on file with the commission is correct.

The commission modifies the rule for clarity. Subsection (e)(1) and (2) are modified and (3) is deleted to clarify the expiration of registration upon failure to renew. March 1, is the date by which registration expires and the registrant is out of compliance with the rule. After March 1, commission staff may attempt to contact registrants to inform a facility of its failure to renew.

TEC observed that the requirements of proposed subsections (c)(6)(F) and (H) require annual information, making it impossible for all of a registrant's information on file to be correct year over year (e.g., (H) requires the facility's actual peak load for the prior year). TEC recommended allowing a registrant to update the information for those two provisions alone, along with a statement that all of its information on file with the commission is correct.

Commission Response

The commission agrees that the information about anticipated and actual peak load required in proposed subsection (c)(6)(F) and (H) must be updated by March 1 each year. The commission modifies the rule to allow a registrant to update only that

information along with a statement that the rest of its information is up to date, as recommended by TEC.

MARA opposed the annual reporting requirement and instead recommended requiring updates only upon material change.

Commission Response

"Material change" is an imprecise term that could lead to confusion as to which changes are material. To avoid this confusion and ensure that each registrant submits updated information at predictable intervals, the commission declines to modify the rule.

ERCOT recommended editing subsection (e)(1) so that commission staff gives notice before the deadline, not after.

Commission Response

Subsection (e)(1), as commented on by ERCOT, was a misprint in a version of the draft filed on the commission's website. The official proposed rule published in the *Texas Register* does not contain this provision. Accordingly, the commission does not modify the rule in response to ERCOT's comment.

Proposed §25.114(f) - Administrative penalty

Proposed subsection (f) categorizes a failure to comply with the rule as a Class A violation. MARA recommended removing the penalty subsection or, in the alternative, making any violation of subsection (f) a Class C violation. Vistra also recommended modifying subsection (f) to make any violation of the rule a Class C violation.

Commission Response

The commission declines to modify the rule to make a violation of the rule a Class C violation. PURA §39.360(d)(2) states that the commission by rule shall establish a method to ensure compliance with these requirements. The statute does not provide the commission with any additional authority or tools with which to ensure compliance, leaving a heightened administrative penalty as the only means by which the commission can comply with this statutory mandate. Moreover, in practical terms, a Class C violation, which is limited to 1,000 dollars per violation per day, may not be a sufficient incentive to ensure the compliance of such large entities. The proposed Class A violation accurately reflects the importance of this requirement to grid reliability and the size of the entities to which these requirements apply. Furthermore, many violations of this section would already be classified as Class A violations - or are similar to existing Class A violations - under §25.8(b)(3), such as conducting business without proper registration or one of the several provisions related to reliability. Finally, under §22.246(c)(3), related to Administrative Penalties, the commission will consider many variables, including the seriousness of the violation and the surrounding facts and circumstances, in determining an appropriate penalty for violations of this rule.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

STATUTORY AUTHORITY

The new section is adopted under the following provisions of PURA: §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.360, which requires certain virtual currency mining facilities to register with the commission, directs the commission to adopt criteria for determining whether a load is interruptible and establish a method to ensure compliance with the statutory registration requirements, and authorizes the commission to share the registration information with ERCOT.

§25.114. Registration of Virtual Currency Mining Facilities.

(a) Registration required. A person operating a virtual currency mining facility receiving retail electric service in the Electric Reliability Council of Texas (ERCOT) region at either transmission or distribution voltage must, not later than one working day after the date the facility begins receiving retail electric service, register the facility as a large flexible load if the facility requires a total load of more than 75 megawatts (MW) and the facility's interruptible load equals 10 percent or more of the actual or anticipated annual peak demand of the facility. A person operating a virtual currency mining facility that is required to register as a large flexible load under this section and began receiving retail electric service prior to the effective date of this rule must register no later than February 1, 2025.

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

(1) Virtual currency--has the meaning assigned by Section 12.001, Business & Commerce Code.

(2) Virtual currency mining facility--a facility that uses electronic equipment to add virtual currency transactions to a distributed ledger.

(3) Interruptible load--the portion of the facility's load that the facility operator can choose to interrupt due to locational marginal prices, load zone prices, response to the ERCOT coincident peak demand for the months of June, July, August and September (4CP), or due to external grid conditions.

(c) A registrant must provide the information listed in this subsection in a format established by the commission.

(1) The registrant's legal business name, the name of the registrant's corporate parent or parents, the name of the registrant's principals, and all business names of the registrant.

(2) A mailing address, telephone number, and e-mail address of the principal place of business of the registrant.

(3) The current name, title, business mailing address, telephone number, and e-mail address for the registrant's regulatory contact person, and whether the regulatory contact is an internal staff member of the registrant.

(4) The form of business being registered (e.g., corporation, partnership, or sole proprietor).

(5) Applicable information on file with the Texas Secretary of State, including, the registrant's endorsed certificate of incorporation certified by the Texas Secretary of State, a copy of the registrant's certificate of fact - status or other business registration on file with the Texas Secretary of State.

(6) For each virtual currency mining facility operated by the registrant:

(A) the name, address, and county of operation of each facility;

(B) the identity of the property owner and lessor or facility host;

(C) the size of the facility in square feet and a description of the infrastructure, including whether it is fixed or movable, open or enclosed;

(D) the names of the transmission and distribution service providers serving the facility and the load zone the facility is located in;

(E) the Electric Service Identifier (ESIID) or equivalent unique premise identifier assigned to the facility;

(F) the anticipated peak load, in MWs, from the facility for each year of the five-year period beginning on the date of the registration;

(G) the percentage of the site load that meets the definition of interruptible load in subsection (b)(3) of this section; and

(H) the actual peak load in MWs and total power consumption in MWhs for the prior calendar year, if the facility took retail electric service at any time during the prior calendar year.

(7) An affidavit signed by a representative, official, officer, or other authorized person with binding authority over the registrant affirming that:

(A) the registrant is authorized to do business in Texas under all applicable laws and is in good standing with the Texas Secretary of State;

(B) that all statements made in the registration submission are true, correct, and complete;

(C) that any changes in the information will be provided in a timely manner;

(D) that the registrant has provided notice of its compliance with this rule to transmission distribution service providers serving its registered facilities; and

(E) that the registrant understands and will comply with all applicable law and rules.

(d) Update of registration. A registrant must amend its registration with the commission within 30 days of a change to the information required by subsection (c) of this section.

(e) Renewal of registration. A virtual currency mining facility registration expires and must be renewed on or before March 1 of every calendar year by either submitting the information required by subsection (c) of this section or by submitting updated information required by subsections (c)(6)(F) and (H) of this section and a statement that the rest of the facility's registration information on file with the commission is current and correct.

(1) By December 31 of each calendar year, commission staff must identify each virtual currency mining facility registration that has not been renewed.

(2) Commission staff will provide ERCOT a list of each virtual currency mining facility that has been identified under paragraph (1) of this subsection by January 31 each year.

(f) Administrative penalty. The commission may impose an administrative penalty on a person for a violation of the Public Utility Regulatory Act, commission rules, or rules adopted by an independent organization, including failure to timely respond to commission or commission staff inquiries. A violation of this section is a Class A violation under §25.8 of this title, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers.

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

Filed with the Office of the Secretary of State on November 21, 2024.

TRD-202405694
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 11, 2024
Proposal publication date: September 13, 2024
For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §61.1051, §61.1053

The Texas Education Agency (TEA) adopts the repeal of §61.1051 and §61.1053, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. The repeal is adopted without changes to the proposed text as published in the August 16, 2024 issue of the *Texas Register* (49 TexReg 6139) and will not be republished. The repeal relocates the existing requirements relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking to new 19 TAC Chapter 103, Subchapter EE. The adopted new rules include updates to align with legislation from the 88th Texas Legislature, Regular Session, 2023.

REASONED JUSTIFICATION: Section 61.1051 relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools.

Section 61.1053 relates signage requirements for posting the offenses of human trafficking on public school premises.

In order to align the rules with other provisions on health and safety, the repeal relocates the requirements from §61.1051 and §61.1053 to new 19 TAC Chapter 103, Health and Safety, Subchapter EE, Commissioner's Rules on Prevention, Awareness, and Reporting of Child Abuse or Neglect, Including Trafficking of a Child. The new sections incorporate legislative updates from the 88th Texas Legislature, Regular Session, 2023. A separate rule action for adopted new 19 TAC Chapter 103, Subchapter EE, provides a detailed description of the changes from the existing rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 16, 2024, and ended September 16, 2024. No public comments were received.

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

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

Filed with the Office of the Secretary of State on November 21, 2024.

TRD-202405671
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 11, 2024
Proposal publication date: August 16, 2024
For further information, please call: (512) 475-1497

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CHAPTER 103. HEALTH AND SAFETY
SUBCHAPTER EE. COMMISSIONER'S RULES ON PREVENTION, AWARENESS, AND REPORTING OF CHILD ABUSE OR NEGLECT, INCLUDING TRAFFICKING OF A CHILD

19 TAC §103.1401, §103.1403

The Texas Education Agency adopts new §103.1401 and §103.1403, concerning prevention, awareness, and reporting of child abuse or neglect, including trafficking of a child. New §103.1401 is adopted with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6139) and will be republished. New §103.1403 is adopted without changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6139) and will not be republished. The adopted new sections relocate existing requirements from 19 TAC Chapter 61, Subchapter EE, relating to school district policies on reporting child abuse and neglect and required signage pertaining to criminal offenses of human trafficking. Adopted new §103.1401 includes updates to school district policy requirements to align with Texas Family Code, §261.104, as amended by House Bill (HB) 63, 88th Texas Legislature, Regular Session, 2023. Adopted new §103.1403 includes updates to signage requirements to align with Senate Bill (SB) 2069, HB 3553, and HB 3554, 88th Texas Legislature, Regular Session, 2023. This rule will be republished.

REASONED JUSTIFICATION: Adopted new §103.1401 includes existing requirements from 19 TAC §61.1051, which relates to the reporting of child abuse and neglect and related training requirements for school districts and open-enrollment charter schools. The following updates align the new section with HB 63, 88th Texas Legislature, Regular Session, 2023. Adopted new §103.1401(b)(2)(D) requires local policies for reporting to include notice that oral reports made to the Texas Department of Family and Protective Services are recorded. Adopted new §103.1401(b)(2)(E) requires local policies to include notice that an individual making a report must provide his or her name, telephone number, and address and include an explanation of the limited circumstances under which the identity of an individual making a report may be disclosed. Based on public comment, §103.1401(b)(2)(H) has been added at adoption to clarify that the Department of Family and Protective Services cannot accept anonymous reports of abuse or neglect, and §103.1401(d) has been modified to remove the training requirement for existing employees to align with SB 1267, 87th Texas Legislature, Regular Session, 2021.

Adopted new §103.1403 includes existing requirements from 19 TAC §61.1053, which relates to signage requirements for posting the offenses of human trafficking on public school premises. To align with SB 2069, 88th Texas Legislature, Regular Session, 2023, adopted new §103.1403(a) is updated to remove the definition of "premises" and modify the definition of "school." Adopted new §103.1403(b) also aligns with SB 2069 by updating the required location of signage. Adopted new §103.1403(c)(1)(A) updates the information related to penalties for trafficking of persons to align with changes to Texas Penal Code, §20A.02, made by HB 3553 and HB 3554, 88th Texas Legislature, Regular Session, 2023.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 16, 2024, and ended September 16, 2024. Following is a summary of public comments received and agency responses.

Comment: The Texas Classroom Teachers Association (TCTA) requested to add language making it clear that the Department of Family and Protective Services is not authorized to accept anonymous reports of abuse and neglect, according to HB 63, 88th Texas Legislature, Regular Session, 2023.

Response: The agency agrees. New §103.1401(b)(2)(H) has been added at adoption to read "the Department of Family and Protective Services is not authorized to accept an anonymous report of abuse or neglect."

Comment: TCTA requested to have language stricken from §103.1401(d) referencing training on recognition and prevention

of sexual abuse, trafficking, and other maltreatment of children for existing school employees who had not been previously trained. TCTA explained that the change is necessary to align the rule with changes made by SB 1267, 87th Texas Legislature, Regular Session, 2021.

Response: The agency agrees. The language referencing existing employees not previously trained has been removed at adoption from §103.1401(d).

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023, which requires each public school to post warning signs describing the increased penalties for trafficking of persons under Texas Penal Code, §20A.02(b-1); TEC, §38.004, which requires the agency to develop a policy governing the reports of child abuse or neglect; TEC, §38.0041, which requires school districts and open-enrollment charter schools to adopt and implement policies addressing sexual abuse, sex trafficking, and other maltreatment of children; TEC, §38.0042, which authorizes the commissioner of education to adopt rules relating to the size and location of the required posting of the child abuse hotline telephone number; Texas Family Code, §261.001, which defines child abuse and neglect, which includes knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Texas Penal Code, §20A.02(a)(5)-(8); and Texas Penal Code, §20A.02(a)(5)-(8), which provides a person commits an offense if the person knowingly: traffics a child with the intent that the trafficked child engage in forced labor or services; receives a benefit from participating in such a venture; traffics a child and by any means causes the trafficked child to engage in, or become a victim of, conduct prohibited by §20A.02(a)(7)(A)-(K); or receives a benefit from participating in such a venture or engages in sexual conduct with a child trafficked in this manner.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§37.086, as amended by Senate Bill 2069, 88th Texas Legislature, Regular Session, 2023; 38.004; 38.0041; and 38.0042; Texas Family Code, §261.001; and Texas Penal Code, §20A.02(a)(5)-(8).

§103.1401. Reporting Child Abuse or Neglect, Including Trafficking of a Child.

(a) The following words and terms, when used in this subchapter, have the following meanings.

(1) Child abuse or neglect--The definition of child abuse or neglect includes the trafficking of a child in accordance with Texas Education Code (TEC), §38.004.

(2) Other maltreatment--This term has the meaning assigned by Human Resources Code, §42.002.

(3) Trafficking of a child--This term has the meaning assigned by Texas Penal Code, §20A.02(a)(5), (6), (7), or (8).

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall adopt and annually review policies for reporting child abuse and neglect. The policies shall follow the requirements outlined in Texas Family Code, Chapter 261.

(1) The policies must require that every school employee, agent, or contractor who suspects a child's physical or mental health or welfare has been adversely affected by abuse or neglect submit a written or oral report to at least one of the following authorities within 48 hours or less, as determined by the board of trustees, after learning of facts giving rise to the suspicion:

(A) a local or state law enforcement agency;

(B) the Texas Department of Family and Protective Services, Child Protective Services Division;

(C) a local office of Child Protective Services, where available; or

(D) the state agency that operates, licenses, certifies, or registers the facility in which the alleged child abuse or neglect occurred.

(2) The policies must require a report to the Texas Department of Family and Protective Services if the alleged abuse or neglect involves a person responsible for the care, custody, or welfare of the child and must notify school personnel of the following:

(A) penalties under Texas Penal Code, §39.06; Texas Family Code, §261.109; and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) for failure to submit a required report of child abuse or neglect;

(B) applicable prohibitions against interference with an investigation of a report of child abuse or neglect, including the following:

(i) Texas Family Code, §261.302 and §261.303, prohibiting school officials from denying an investigator's request to interview a student at school; and

(ii) Texas Family Code, §261.302, prohibiting school officials from requiring the presence of a parent or school administrator during an interview by an investigator;

(C) immunity provisions applicable to a person who reports child abuse or neglect or otherwise assists an investigation in good faith;

(D) oral reports made to the Texas Department of Family and Protective Services are recorded;

(E) confidentiality provisions relating to reports of suspected child abuse or neglect, including the following:

(i) the requirement for the individual making the report to provide his or her name and telephone number;

(ii) the requirement for the individual making the report to provide his or her home address or, if the individual making the report is a school employee, agent, or contractor, provide his or her business address and profession; and

(iii) the limited circumstances under which the identity of the individual making a report may be disclosed;

(F) any disciplinary action that may result from noncompliance with the district's reporting policy;

(G) the prohibition under TEC, §26.0091, against using or threatening to use the refusal to consent to administration of a psychotropic drug to a child or to any other psychiatric or psychological testing or treatment of a child as the sole basis for making a report of neglect, except as authorized by TEC, §26.0091; and

(H) the Department of Family and Protective Services is not authorized to accept an anonymous report of abuse or neglect.

(3) Each school district and open-enrollment charter school shall adopt and implement a policy addressing sexual abuse, trafficking, and other maltreatment of children. The policy must be included in any informational handbook provided to students and parents and must address the following:

(A) methods for increasing staff, student, and parent awareness of issues regarding sexual abuse, trafficking, and other forms of maltreatment of children, including prevention techniques and knowledge of likely warning signs indicating that a child may be a victim;

(B) actions a child who is a victim of sexual abuse, trafficking, or other maltreatment should take to obtain assistance and intervention; and

(C) available counseling options for students affected by sexual abuse, trafficking, or other maltreatment.

(4) The policies must be consistent with Texas Family Code, Chapter 261, and 40 TAC Chapter 700 (relating to Child Protective Services) regarding investigations by the Texas Department of Family and Protective Services, including regulations governing investigation of abuse by school personnel and volunteers.

(5) The policies may not require that school personnel report suspicions of child abuse or neglect to a school administrator prior to making a report to one of the agencies identified in paragraph (1) of this subsection.

(6) The policies must include the current toll-free telephone number of the Texas Department of Family and Protective Services.

(7) The policies must provide for cooperation with law enforcement child abuse investigations without the consent of the child's parent, if necessary, including investigations by the Texas Department of Family and Protective Services.

(8) The policies must include child abuse anti-victimization programs in elementary and secondary schools consisting of age-appropriate, research-based prevention designed to promote self-protection and prevent sexual abuse and trafficking.

(c) The policies required by this section and adopted by the board of trustees shall be distributed to all school personnel at the beginning of each school year. The policies shall be addressed in staff development programs at regular intervals determined by the board of trustees.

(d) Training concerning prevention techniques for, and recognition of, sexual abuse, trafficking, and all other maltreatment of children, including the sexual abuse, trafficking, and other maltreatment of children with significant cognitive disabilities, must be provided as a part of new employee orientation to all new school district and open-enrollment charter school employees as required by TEC, §38.0041.

(1) The training must include:

(A) factors indicating a child is at risk for sexual abuse, trafficking, or other maltreatment;

(B) warning signs indicating a child may be a victim of sexual abuse, trafficking, or other maltreatment;

(C) internal procedures for seeking assistance for a child who is at risk for sexual abuse, trafficking, or other maltreatment, including referral to a school counselor, a social worker, or another mental health professional;

(D) techniques for reducing a child's risk for sexual abuse, trafficking, or other maltreatment; and

(E) information on community organizations that have relevant research-based programs that are able to provide training or other education for school district or open-enrollment charter school staff, students, and parents.

(2) Each school district and open-enrollment charter school must maintain records that include the name of each staff member who participated in training.

(3) To the extent that resources are not yet available from the Texas Education Agency or commissioner of education, school district and open-enrollment charter schools shall implement the policies and trainings with existing or publicly available resources. The school district or open-enrollment charter school may also work in conjunction with a community organization to provide the training at no cost to the district or charter school.

(e) Using a format and language that is clear, simple, and understandable to students, each public school and open-enrollment charter school shall post, in English and in Spanish:

(1) the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number;

(2) instructions to call 911 for emergencies; and

(3) directions for accessing the Texas Department of Family and Protective Services website (www.txabusehotline.org) for more information on reporting abuse, neglect, and exploitation.

(f) School districts and open-enrollment charter schools shall post the information specified in subsection (e) of this section at each school campus in at least one high-traffic, highly and clearly visible public area that is readily accessible to and widely used by students. The information must be on a poster (11x17 inches or larger) in large print and placed at eye-level to the student for easy viewing. Additionally, the current toll-free Texas Department of Family and Protective Services Abuse Hotline telephone number should be in bold print.

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

Filed with the Office of the Secretary of State on November 21, 2024.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.24, Complaint Processing.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6953) and will not be republished.

The amendments to §153.24 clarify the preliminary investigative review process and corrects references within the rule to another section and another rule.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405620
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3088

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §§157.9 - 157.11

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §§157.9, Notice of Hearing; 157.10, Right to Counsel; Right to Participate; and 157.11, Contested Cases; Entry of Appearance; Continuance.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6955) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments to §157.9 simplify the language and make the section more readable.

The amendments to §157.10 provide more detail to the section title and clarify the applicability of SOAH rules related to translations.

The amendments to §157.11 more consistently utilizes abbreviations used through the chapter.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code 1103.151, Rules Relating to Certificates and Licenses, §1103.154, which authorizes TALCB to adopt rules related to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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

Filed with the Office of the Secretary of State on November 19, 2024.

TRD-202405621
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 9, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3088

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SUBCHAPTER C. POST HEARING

22 TAC §157.17, §157.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.17, Final Decisions and Orders, and §157.18, Motions for Rehearing.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6956) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments to §157.17 simplify the language. The amendments to §157.18 add a reference a specific section in 1103, for clarity and consistency.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

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

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405622
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3088

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SUBCHAPTER D. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

22 TAC §157.25

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §157.25, Temporary Suspension.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6958) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments utilize an abbreviated term for consistency in the chapter.

No comments were received regarding adoption of the amendments

The amendments are adopted under Texas Occupations Code §§1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and 1104.051, which authorizes TALCB to adopt rules necessary to administer Chapter 1104, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on November 20, 2024.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: December 10, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3088

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SUBCHAPTER E. ALTERNATIVE DISPUTE RESOLUTION

22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB) adopt amendments to 22 TAC §157.31, Investigative Conference.

The amendments are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6960) and will not be republished.

The amendments are made following TALCB's quadrennial rule review for this Chapter, to better reflect current TALCB procedures, and to simplify and clarify where needed.

The amendments to §157.31 clarify the timing of when an acknowledgement form may be submitted to the Board.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee and §1103.154, which authorizes TALCB to adopt rules relating to professional conduct.

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

Filed with the Office of the Secretary of State on November 20, 2024.

TRD-202405624
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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Proposal publication date: September 6, 2024
For further information, please call: (512) 936-3088

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.470, 115.471, 115.473

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§115.470, 115.471, and 115.473.

Amended §§115.470, 115.471, and 115.473 are adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5320) and therefore will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

Effective November 7, 2022, EPA reclassified nonattainment areas under the 2008 ozone National Ambient Air Quality Standards (NAAQS) (87 *Federal Register* (FR) 60926). A 10-county Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and an eight-county Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) were reclassified from serious to severe nonattainment with a 2026 attainment year and an attainment deadline of July 20, 2027. Reclassification

to severe nonattainment triggered emission control evaluation, emission reduction quantification, rule writing, and SIP submission requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas that were submitted to EPA on May 7, 2024, to meet the deadline established in EPA's reclassification action for the 2008 ozone NAAQS.

The adopted rule revisions address federal Clean Air Act (FCAA) contingency measure requirements for the DFW and HGB ozone nonattainment areas. Contingency measures are control requirements that will take effect and result in emissions reductions if an area fails to attain a NAAQS by the applicable attainment date or fails to demonstrate reasonable further progress (RFP). Requirements for SIP contingency measures are established under FCAA, §172(c)(9) and §182(c)(9). This rule adoption specifically addresses the requirement for contingency measures that will take effect if either or both of the DFW and HGB nonattainment areas fail to attain or fail to demonstrate RFP under the 2008 eight-hour ozone NAAQS. Contingency measures for the DFW and HGB 2008 eight-hour ozone nonattainment areas were developed and submitted to EPA in a 30 TAC Chapter 115 rulemaking (Project No. 2023-116-115-AI) and three SIP revisions adopted April 24, 2024: the DFW 2008 Ozone NAAQS Severe Attainment Demonstration (AD) SIP Revision (Project No. 2023-107-SIP-NR), the HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR). The contingency measures included in this rulemaking were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024.

Prior to adoption of the previous Chapter 115 rulemaking (Project No. 2023-116-115-AI), TCEQ staff determined there were omissions and incorrect limits in 30 TAC Chapter 115, Subchapter E, Division 7 rule revisions relating to Miscellaneous Industrial Adhesives. Omissions and incorrect limits in the rulemaking for the industrial adhesive volatile organic compounds (VOC) category resulted in an adopted industrial adhesive contingency measure that was insufficient to achieve the intended emission reductions in the associated SIP revisions. The industrial adhesives contingency measure was developed and intended to achieve VOC emissions reductions of 3.31 tons per day (tpd) in the DFW area and 3.12 tpd in the HGB area. However, the April 24, 2024, rulemaking implemented a measure that would only achieve 1.05 tpd in the DFW area and 0.99 tpd in the HGB area. The adopted rules, if triggered for contingency, will result in additional VOC emissions reductions of 2.26 tpd in the DFW area and 2.13 tpd in the HGB area. These additional SIP contingency emissions reductions, together with the previously adopted measures (Project No. 2023-116-115-AI), achieve the total contingency emissions reductions originally intended, 3.31 tpd in the DFW area and 3.12 tpd in the HGB area. Therefore, this rulemaking restores the emissions reductions to the amounts described in the contingency plan narratives in the adopted DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR).

The adopted contingency measures apply independently and separately for the DFW and HGB 2008 ozone NAAQS nonattainment areas. Implementation of a contingency measure will be triggered upon EPA publication of a notice in the *Federal Register* that the specified area(s) failed to meet the applicable ozone NAAQS by the applicable attainment date or demonstrate RFP and the commission's subsequent publication in the *Texas Register* that compliance with the contingency measure is required. Affected sources will be required to comply with the contingency rules by no later than 270 days after *Texas Register* publication.

Demonstrating Noninterference under Federal Clean Air Act, §110(l)

Under FCAA, §110(l), EPA cannot approve a SIP revision if it "would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of." The commission provides the following information to demonstrate why the adopted changes to the Chapter 115, Subchapter E, Division 7 rules in §115.470 (relating to Applicability and Definitions) and §115.473 (relating to Control Requirements) will not negatively impact the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS in the DFW or HGB nonattainment areas.

The commission adopts changes to Subchapter E, Division 7, Miscellaneous Industrial Adhesives, to implement a SIP contingency measure, as required by FCAA, §172(c)(9) and §182(c)(9). This measure, if triggered, will reduce VOC emissions in the DFW and/or HGB areas by revising VOC content limits on various types of industrial adhesives. The changes add new and revised VOC content limits in 30 TAC §115.473(e) and (f) that will apply if the contingency measure is triggered for the DFW or HGB area, respectively. These limits will, upon triggering, replace the current Chapter 115 VOC content limits in §115.473(a) for the DFW and/or HGB areas with limits taken from South Coast Air Quality Management District (SCAQMD) Rule 1168, as amended November 4, 2022.

Existing limits for industrial adhesives in 30 TAC §115.473(a) were developed to meet reasonably available control technology (RACT) requirements established by the 2008 EPA Control Techniques Guidelines (CTG) for Miscellaneous Industrial Adhesives. The emission limit recommended in the CTG is based on the 2005 version of SCAQMD Rule 1168. Since 2005, SCAQMD Rule 1168 has been amended to establish emission limits for bonding specific substrates. After the 2005 amendment of SCAQMD Rule 1168, several industry groups commented that no available adhesives could meet the VOC content limits for several categories of materials, and SCAQMD amended the rule in 2005 to allow higher interim VOC content adhesives while lower VOC content adhesives were being developed. This process continued through 2022, with multiple studies, interim limits, and revised lower VOC content limits once compliant adhesives were developed.

The six VOC content limits reduced in this rule adoption are beyond the limits in the rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI), which were set at the interim limits for those materials categories in SCAQMD Rule 1168. The adopted limits will replace the Rule 1168 interim limits previously adopted April 24, 2024, with the SCAQMD Rule 1168 final limits for those materials categories. Changes in SCAQMD Rule 1168 since 2005 for pressure sensitive adhesive primers, adhesives to join two specialty plastics, adhesives used in the manufacturing of computer diskettes, and adhesives for structural wood components have increased VOC content limits beyond the VOC content in §115.473(a). The adhesive applications in these categories were new subcategories of previous SCAQMD Rule 1168 and TCEQ adhesive rule categories. TCEQ chose its industrial adhesive contingency measure VOC content limits to equal the SCAQMD Rule 1168 limits adopted November 4, 2022, because TCEQ agrees with SCAQMD's analysis on technological

feasibility for these limits. SCAQMD's analysis can be found in SCAQMD's *Preliminary Draft Staff Report for Rule 1168 - Adhesive and Sealant Applications*, dated August 2022.

Calculated emissions reductions for this measure sum the reductions in some adhesive categories and the increases in other categories to produce net emission reductions. In this adopted rulemaking, TCEQ provides the contingency measure emission reductions in a manner that avoids negatively impacting the status of the state's progress towards attainment or preventing reasonable further progress toward attainment of the ozone NAAQS in the DFW and HGB nonattainment areas or any other applicable requirement of the FCAA.

Section by Section Discussion

In addition to the information provided above for a background and summary of the adopted rules, including a demonstration of noninterference with §110(l) of the FCAA, the commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections.

Subchapter E: Solvent-Using Processes

Division 7. Miscellaneous Industrial Adhesives

The commission adopts amendments to Subchapter E, Division 7 to establish lower contingency VOC content limits for some existing industrial adhesive source categories, to add new subcategories of industrial adhesives with associated contingency measure VOC content limits, and to specify that the contingency VOC content limits, if triggered, will apply to adhesives used in the field. All contingency measure VOC content limits adopted in this rulemaking are the same or lower than the contingency measure limits added in the rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI). These amendments will be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas if triggered for SIP contingency purposes.

In the rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI), staff inadvertently used interim higher VOC content limits from SCAQMD Rule 1168 for six industrial adhesive categories in Figures 30 TAC §115.473(e) and §115.473(f): acrylonitrile-butadiene-styrene (ABS) to polyvinyl chloride (PVC) Transition Cement, chlorinated polyvinyl chloride (CPVC) Welding Cement, Higher Viscosity CPVC, PVC Welding Cement, Rubber Vulcanization Adhesive, and Top and Trim Adhesive. This rulemaking corrects each of these unintended VOC content limits with limits that are more stringent, as previously intended. The rulemaking specifies that the contingency VOC content limits, if triggered, will apply to adhesives used in the field. The adopted VOC content limits and applicability specification align the SIP contingency rules in Chapter 115 with the limits used to calculate SIP contingency measure VOC emission reductions in the SIP revisions adopted April 24, 2024: the DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR).

Four of the contingency VOC content limits included in the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI) are revised in this rulemaking to be higher than the associated non-contingency VOC content limits in existing §115.473(a): ABS to PVC Transition Cement, PVC Welding Cement, Rubber Vulcanization Adhesive, and Top and Trim Adhesive. These changes will not interfere with meeting FCAA requirements in the DFW or HGB areas, as described elsewhere in this preamble, with all changes collectively producing net emission reductions.

This rulemaking also adds 20 industrial adhesive subcategories and establishes industrial adhesive VOC content limits that, if triggered for SIP contingency purposes, will achieve VOC emissions reductions consistent with the limits used to calculate VOC emissions reductions in the SIP revisions adopted April 24, 2024: the DFW AD SIP revision (Project No. 2023-107-SIP-NR), the HGB AD SIP revision (Project No. 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project No. 2023-108-SIP-NR). The 20 industrial adhesive category VOC content limits were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI).

§115.470 Applicability and Definitions

The commission adopts this rulemaking to add a provision to §115.470(a) which, upon triggering for SIP contingency purposes for either the DFW or HGB area, or both, will make adhesives and adhesive primers applied for compensation subject to this rule division. This is intended to exclude consumer use while including institutional, commercial, and industrial uses. It will also exclude use by volunteers such as Habitat for Humanity home builders or volunteers repairing homes without compensation. Home building and remodeling contractors will be included since they are compensated for their work applying adhesives. Adhesive use in commercial, institutional, and industrial settings is included because those uses are assumed to be for compensation. Emissions from consumer use were not included in the emissions reduction calculations for this contingency measure. Affected entities are required by §115.478(b)(1) to maintain records of VOC content to demonstrate compliance with the applicable VOC limits in §115.473(a), (e), or (f). Prior to triggering for contingency, field use of adhesives will continue not to be subject to the division.

The commission adopts this rulemaking to add 43 new definitions and to amend three existing definitions in §115.470(b). The new definitions were inadvertently omitted from the Chapter 115 rulemaking adopted April 24, 2024, (Project No. 2023-116-115-AI) and are necessary to implement VOC content limits for the industrial adhesive source categories. New definitions differentiate the new application-specific adhesives VOC content limits in adopted §115.473(e) and (f); to clarify the lower VOC content limits for existing application-specific adhesive content limits in adopted §115.473(e) and (f); to clarify the applicability of existing control requirements in §115.473(b); and to clarify the applicability of exemptions in existing §115.471(d)(2)(A), §115.471(d)(2)(G), and §115.471(d)(2)(I).

New definitions are adopted for architectural application; building envelope; building envelope membrane adhesive; carpet pad adhesive; chlorinated polyvinyl chloride (CPVC) welding or CPVC welding cement for life safety systems; computer diskette manufacturing; dry wall adhesive; ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive; glass, porcelain, and stone tile adhesive; hot applied modified bitumen or built up roof adhesive; modified bituminous material; modified bituminous primer; panel adhesive; roof adhesive primer; rubber flooring adhesive; rubber vulcanization adhesive; shingle laminating

adhesive; structural glazing adhesive; structural wood member adhesive; subfloor adhesive; vinyl compositions tile (VCT); vinyl compositions tile or VCT adhesive; and wood flooring adhesive. The adopted definitions in §115.470(b) specify the meaning of VOC limits for the application-specific adhesives included in the tables in adopted §115.473(e) and §115.473(f).

The commission also adopts new definitions in §115.470(b) for acrylonitrile-butadiene-styrene (ABS); acrylonitrile-butadiene-styrene or ABS to polyvinyl chloride (PVC) transition cement; acrylonitrile-butadiene-styrene or ABS welding cement; edge glue; fiberglass; higher viscosity CPVC welding cement; pressure sensitive adhesive; tire tread adhesive; top and trim adhesive; traffic marking tape; and vehicle glass adhesive primer. The adopted definitions clarify which adhesives and primers will be subject to the lower VOC content limits in adopted §115.473(e) and (f) if triggered for contingency purposes.

The commission also adopts new definitions in §115.470(b) for dip coat; electrostatic spray; flow coat; hand application methods; high volume low-pressure (HVLP) spray; and transfer efficiency. The adopted definitions clarify the applicability of control requirements in existing §115.473(b).

The commission also adopts new terms and definitions for adhesive tapes; shoe repair, luggage, and handbag adhesive; and solvent welding in §115.470(b). The adopted terms and definitions clarify the applicability of exemptions in existing §115.471(d)(2)(A), §115.471(d)(2)(G), and §115.471(d)(2)(I).

The commission adopts amendments to three existing definitions in §115.470(b). Language is added to the definition for chlorinated polyvinyl chloride or CPVC welding to clarify that the VOC content limit in §115.473 (e) and (f) applies to adhesives used in CPVC components for shower pan liner, drain, closet flange, and backwater valve systems as well as CPVC pipe and fittings. The commission also adopts amendments to the definitions for the existing terms indoor floor covering installation adhesive and multipurpose construction adhesive. The commission adopts amendments to each of these two definitions that maintain the existing definitions for use with the existing exemption provisions in §115.471(a) - (c) and add revised definitions for use with the exemption provisions in §115.471(d) and the control requirements in §115.473(e) and (f) if a contingency scenario is triggered in the DFW area, the HGB area, or both areas. Existing definitions in §115.470 are renumbered and reordered accordingly but are not otherwise substantively changed.

§115.471 Exemptions

The commission adopts an amendment to the last sentence of §115.471(d) to reference §115.479(c) or (d), rather than §115.479(c) or (e). This amendment correctly stipulates the compliance schedule for a contingency scenario in either the DFW or HGB area, or both areas.

§115.473 Control Requirements

The commission adopts adjustments to the VOC content limits associated with the miscellaneous industrial adhesives to correct contingency measure deficiencies in existing subsection §115.473(e) for the DFW area and §115.473(f) for the HGB area. The existing contingency control requirements are the same for both areas and specify that the limits must be met by applying low-VOC adhesives or adhesive primers. Adopted changes correct some VOC content limits included in a Chapter 115 rulemaking adopted April 24, 2024, and add VOC content limits meant to be included in that previous rulemaking. The adopted revisions establish emissions limits in §115.473(e) and §115.473(f) that are consistent with the current SCAQMD Rule 1168, as originally intended for the previously adopted rulemaking.

Adopted VOC content limits in the architectural applications category consist of building envelope membrane adhesive; carpet pad adhesive; ceramic tile installation adhesive; cove base installation adhesive, dry wall adhesive, glass, porcelain, and stone tile adhesive; multipurpose construction adhesives; and panel adhesive.

Adopted VOC content limits in the roofing category consist of hot applied modified bitumen or built up roof adhesive, ethylene propylene diene terpolymer (EPDM) and thermoplastic polyolefin (TPO) single-ply roof membrane adhesive, single-ply roof installation and repair membrane adhesive (except EPDM and TPO), shingle laminating adhesive, and all other roof adhesives.

Other individual VOC content limits for application-specific adhesives are adopted for rubber floor adhesive, structural glazing adhesive, structural wood member adhesive, subfloor adhesive, vinyl compositions tile (VCT) and asphalt tile adhesive, wood flooring adhesive, all other indoor floor covering adhesives, and all other outdoor floor covering adhesives.

Final Regulatory Impact Determination

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

The specific intent of these adopted rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone mandated by 42 United States Code (USC), 7410, Federal Clean Air Act (FCAA), §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The rulemaking addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, as discussed elsewhere in this preamble. States are required to adopt State Implementation Plans (SIPs) with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as

may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of the proposal preamble, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses, beyond what is necessary to attain the ozone NAAQS, on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

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

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as "Major environmental rules" that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a "Major environmental rule" that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a "Major environmental rule" that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the adopted rules do not impose burdens greater than required to demonstrate attainment of the ozone NAAQS as discussed elsewhere in this preamble. For these reasons, the adopted rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 4 89 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

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

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), §7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The rulemaking addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

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

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rule adoption in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §26.12(l)). The CMP policy applicable to the rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §26.32). The rulemaking will not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §26.12(1) and the CMP policy in 31 TAC §26.32. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §29.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the rulemaking is adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Public Comment

The public comment period for the proposed rulemaking opened June 14, 2024, and closed July 29, 2024. TCEQ offered a virtual public hearing on July 25, 2024, at 10:00 a.m.; however, no individuals registered to provide testimony, and the hearing was not opened. During the comment period, the commission received comments from Texans for Environmental Awareness (TEA) recommending changes to the rule revision.

In this response to comments, the commission uses "HGB area" to refer to the 2008 eight-hour ozone nonattainment area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, unless otherwise specified. "DFW area" refers to the 2008 eight-hour ozone nonattainment area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, unless otherwise indicated.

Response to Comments

Comment

TEA recommended that the commission implement limits that align with EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives* and provided example limits from those guidelines: general adhesives limits of 30 grams/liter (g/l) or lower; contact adhesives limits of 70 g/l or lower; and adhesive primer limits of 250 g/l or lower.

Response

TCEQ's existing industrial adhesive VOC limits in 30 TAC §115.473(a) mirror EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives* Reasonably Available Control Technology (RACT) limits. The industrial adhesive contingency measure VOC content limits in this rulemaking parallel the South Coast Air Quality Management District's (SCAQMD's) most recent (2023) limits. The SCAQMD's limits produce lower emissions from this sector than EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives.*Changes made to the VOC content limits do not adversely affect emission reductions and are intended to produce net emission reductions for the DFW and HGB areas when triggered for SIP contingency purposes, as described in the rule preamble.

Two of the three example CTG limits TEA provided are not consistent with EPA's *Control Techniques Guidelines for Miscellaneous Industrial Adhesives*. TEA correctly stated EPA's CTG limit for general adhesives primers, which is also the contingency limit at existing §115.473(e) and (f), the limit in adopted §115.473(e) and (f), and is consistent with the existing non-contingency limit at §115.473(a). TEA's example limit for general adhesives, 30 g/l or lower, does not correspond to EPA's CTG limit for general adhesives of 250 g/l. The contingency general adhesive limits in existing and adopted §115.473(e) and (f) match the CTG, and the non-contingency limit at existing §115.473(a) is also consistent with the CTG limit. This matches the SCAQMD limit, and TCEQ agrees that this is the lowest VOC content currently feasible for general adhesives.

TEA's recommended 70 g/l or lower limit for contact adhesives is also not the limit included in EPA's CTG, which is 250 g/l. The non-contingency limit at §115.473(a) is consistent with the CTG limit, but the contingency limit in existing and adopted §115.473(e) and (f) will lower that limit to 80 g/l if triggered for SIP contingency purposes. This matches the SCAQMD limit, and TCEQ agrees that this is the lowest VOC content currently feasible for general contact adhesives.

No changes were made in response to this comment.

Comment

TEA recommended the use of application methods and equipment to minimize VOC emissions, including systems that use brush, roll coat, and automated spray application methods.

Response

Existing control requirements for industrial adhesives require use of high transfer efficiency application methods that limit VOC emissions. These methods, outlined in §115.473(b), include electrostatic spray, high-volume, low-pressure spray (HVLP), flow coat, roll coat, hand application (including brush coat), dip coat, airless spray, and air-assisted airless spray. Other application methods must be equivalent or more efficient than HVLP spray applications.

No changes were made in response to these comments.

Comment

TEA recommended the implementation of monitors and detectors such as the Continuous Emissions Monitoring Systems (CEMS), photoionization detectors, and flame ionization detectors, to measure VOC concentrations continuously and accurately. TEA also commented that regular performance tests should be required to ensure properly functioning monitoring equipment.

Response

Applicable testing and monitoring requirements for miscellaneous industrial adhesives are specified in §115.475 and §115.478, which are not included in this rulemaking. This comment is outside the scope of the rulemaking.

No changes were made in response to this comment.

Comment

TEA commented that proper ventilation, maintenance of equipment, and covered storage for VOC-containing materials should be part of required work practices.

Response

Existing work practice requirements for miscellaneous industrial adhesives are outlined in §115.473(c), wherein closed containers are required for VOC-containing materials during storage and mixing. VOC-containing materials must also be transported in closed containers or pipes. If a vapor control system is in place, owner/operators must maintain and test the equipment to comply with the required capture and control efficiencies outlined in existing §115.475(3) and (4). The reductions in VOC emissions associated with the adopted rules are intended to be achieved from lowering the VOC content of industrial adhesives with the current work practices.

Comment

TEA recommended that low-VOC or VOC-free adhesives or spray equipment that meets high-efficiency transfer standards be used.

Response

Use of low-VOC adhesives are required by existing §115.473(a)(1) according to the limits in Figure: 30 TAC §115.473(a). Provisions for spray equipment that meets high-efficiency transfer standards are currently required under §115.473(b). Under a contingency triggering scenario, VOC content limits in §115.473(e) and (f) would apply, as listed in Figure: 30 TAC §115.473(e) for the DFW area and Figure: 30 TAC §115.473(f) for the HGB area. These new limits are lower for some applications and include more categories of adhesives.

No changes were made in response to this comment.

Comment

TEA recommended that detailed logs of VOC use, emissions, and maintenance be required for full transparency and accountability.

Response

Applicable monitoring and recordkeeping requirements for miscellaneous industrial adhesives sufficient to assure compliance are specified in §115.478, which was not included in this rulemaking. This comment is outside the scope of the rulemaking.

No changes were made in response to this comment.

Comment

TEA commented on the need to implement more stringent regulations for emergency releases.

Response

Establishing stricter regulations for VOC emissions during emergency releases and requiring mandatory reporting and immediate corrective actions for emergency releases are considered outside the scope of this rule revision. Emergency release reporting and corrective action provisions are found in 30 TAC Chapter 101, Subchapter F.

No changes were made in response to this comment.

Comment

TEA recommended that the commission remove or minimize the exemptions for industrial processes currently allowed to emit significant amounts of VOC without regulation. TEA commented on small facility exemptions, recommending that small facilities contributing to VOC emissions be subject to monitoring and control techniques. TEA also commented that regulations should be applicable to all regions in Texas without exemptions.

Response

The purpose of this rulemaking is to amend/add provisions intended to be included in the previous rulemaking (Project Number 2023-116-115-AI) to implement contingency plans for the 2008 ozone NAAQS nonattainment areas. The current rule, with amendments recently adopted April 24, 2024, removed the 3.0 ton per year small facility exemption to generate emission reductions needed for SIP contingency purposes. Non-exempt sites would be subject to control and other applicable requirements if the contingency measure is triggered, as requested by TEA. Additional controls beyond those needed to achieve a complete contingency plan in the DFW and HGB areas, as included in the three SIP revisions adopted April 24, 2024, the DFW 2008 Ozone NAAQS Severe Attainment Demonstration (AD) SIP Revision (Project No. 2023-107-SIP-NR), the HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), and the DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR) are outside the scope of this rulemaking. If emission reductions are needed in other areas of Texas for other purposes, the commission may consider expanding the geographic applicability of these reduced VOC content limits and remove exemptions in subsequent rulemaking.

No changes were made in response to this comment.

Comment

TEA recommended that the commission involve communities in both monitoring and decision-making processes as well as in educational initiatives.

Response

TCEQ offers several opportunities for engaging with the local community and also provides educational outreach. For example, with regard to engagement of the public in the air monitoring area, the public can comment on TCEQ's annual air monitoring network plans and five year assessments, which are posted for 30 days to gather feedback from the public before submission to EPA. TCEQ also offers educational outreach related to air quality and pollution prevention through programs like "Take Care of Texas." TCEQ strives to offer engagement opportunities to all persons, including those in vulnerable communities, and strives to ensure that all persons can participate meaningfully in TCEQ programs and activities through public participation, including appropriate accommodations when needed to ensure language access needs and Title VI of the Civil Rights Act of 1964 requirements are met.

Opportunities for local communities to engage in and provide input on this rulemaking were offered to the public by means of a virtual public hearing on July 25, 2024, at 10:00 a.m., accessible to all populations. Hearing notices were published in *The Dallas Morning News* and the *Houston Chronicle* newspapers in English and in *Al Día* and *La Voz* newspapers in Spanish. Additionally, two Spanish language interpreters were present during the public hearing and provided interpretation services to be inclusive of persons with limited English proficiency. Various methods were made available for the public to provide comments on the rulemaking. Methods included providing comments in writing by mail, fax, e-mail, and online during the comment period, which closed on July 29, 2024.

No changes were made in response to this comment.

Comment

TEA recommended that the commission provide incentives and technical assistance to facilities that transition to low-VOC adhesives and technologies.

Response

The commission offers free technical assistance to small businesses from the section, including the EnviroMentor programs. Alongside others, these programs offered by the commission may assist facilities transitioning to low-VOC adhesives and new technologies.

No changes were made in response to this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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CHAPTER 230. GROUNDWATER AVAILABILITY CERTIFICATION FOR PLATTING

30 TAC §§230.1 - 230.11

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§230.1 - 230.11.

Sections 230.1, 230.3, 230.4, 230.5, 230.8, 230.10, and 230.11 are adopted *with changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3696) and will be republished. Sections 230.2, 230.6, 230.7, and 230.9 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The purpose of this rulemaking adoption is to implement the provisions of Senate Bill (SB) 2440, passed during the 88th Texas Legislature's Regular Session in 2023. Local Government Code (LGC) §212.0101 and §232.0032 establish requirements for groundwater availability certification in the municipal and county plat application and approval process for proposed subdivisions when the groundwater beneath the land serves as the source of water supply. SB 2440 amended §212.0101(a) and §232.0032(a) to make groundwater availability certification a mandatory component of the plat application and approval process. SB 2440 also established specific circumstances under which a municipal or county authority may waive the certification requirement by adding §§212.0101(a)(1) and (a)(2) and §§232.0032(a)(1) and (a)(2). SB 2440 became effective on January 1, 2024, and requires that existing commission rules are continued in effect for plat applications filed before January 1, 2024.

The charge to TCEQ under LGC, §§212.0101(b) and (c) and §§232.0032(b) and (c) is limited to adopting rules that establish the form and content of a groundwater availability certification and require transmittal of specific information to the Texas Water Development Board and the applicable groundwater conservation district. Currently, 30 TAC §230.1 and §§230.3 - 230.11 include references to applicability and have embedded forms. Since applicability is addressed by LGC §§212.0101(a), (a)(1) and (a)(2) and §§232.0032(a), (a)(1) and (a)(2) and TCEQ is not charged by statute with further defining applicability, the adopted rulemaking replaces applicability provisions with general provisions that identify the purpose of the rule. And since the current rules specify transmittal requirements and groundwater availability certification contents, the adopted rulemaking removes the embedded forms and replace those with references to TCEQ forms so that the format of the forms can be updated as technology changes.

During rule proposal, the commission received several comments relating to waiver requirements. Specifically, stakeholders recommended the commission define the term "credible evidence" in rule. After further evaluation of the statute, the commission concluded that the statute does not charge TCEQ with defining applicability or waiver requirements. Because the statute defines applicability and waiver requirements and "credible evidence" is a part of waiver requirements as defined by LGC §§212.0101(a-1)(1) and 232.0032(a-1)(1), a definition was not included in the rule adoption.

Many comments were received that requested amendments or additions to the rules that are outside of the scope of this rulemaking. Although changes to the rule cannot be made based on these comments, the commission reviewed the merits of the comments, and provided responses where appropriate.

Some commentors requested amendments requiring groundwater district contact information to be submitted as part of the groundwater availability certification. Other comments were received requesting non-substantive clarifications of proposed and existing rule language. Changes to the rules were made in response to these comments.

Some comments supported the removal of embedded forms from the rule and replacing those with references to TCEQ forms so that the format of the forms can be updated as technology changes. Comments on the new TCEQ forms were also received and, where appropriate, changes to those forms were made in response to those comments.

Section by Section Discussion

§230.1, Applicability

LGC, §§212.0101(b) and (c) and §§232.0032(b) and (c) charge the commission with adopting rules that establish the form and content of a groundwater availability certification and require plat applicants to transmit specific information to the Texas Water Development Board and any applicable groundwater conservation district. TCEQ adopts amendments to this section that eliminate the applicability provisions because those are established by LGC, §§212.0101(a), (a)(1), and (a)(2) and §§232.0032(a), (a)(1), and (a)(2). The adopted rule replaces applicability provisions with general provisions that identify the purpose of the rule consistent with LGC, §§212.0101(b) and (c) and §§232.0032(b) and (c).

The commission also adopts amendments to remove the form embedded at §230.1(c)(2) and instead require submittal of Plat Attesting Form (TCEQ-20983). Removing the form from the rule allows for the format to change with technology over time. Conforming changes are adopted throughout 30 TAC §230.1.

§230.1(a) is adopted with changes to the proposed text to add new language at the end of the paragraph to clarify the purpose of the rule: ", which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply."

§230.2, Definitions

The adopted amendment removes the definition of "executive administrator" at §230.2(6), because "executive administrator" is not used independently from "of the Texas Water Development Board" within the chapter and, therefore, the definition is not necessary.

§230.3, Certification of Groundwater Availability for Platting

The adopted amendment makes conforming changes where these sections reference the provisions modified at §230.1. The adopted amendment also removes the form embedded at §230.3(c) and instead requires submittal of Certification of Groundwater Availability for Platting Form (TCEQ-20982). Removing the form from the rule allows for the format to change with technology over time. Conforming changes are adopted throughout 30 TAC §230.3.

Section 230.3(c) is adopted with changes to the proposed text to add clarifying language following the word "certification": "...of adequacy of groundwater under the subdivision required by this chapter..."

§230.4, Administrative Information

The commission adopts amendments to §230.4 to make a conforming citation where the plat applicant "must" now follow 30 TAC Chapter 230 rules, rather than "may" or "shall" follow 30 TAC Chapter 230 rules. The word "must," now replaces "may" and "shall," throughout §230.4. Additionally, amendments are adopted that make conforming changes where these sections reference the provisions modified at §230.1 and §230.3.

The commission adopts amendments to require an email address along with the existing contact information required by this section.

Section 230.4 is adopted with changes to the proposed text to add new §230.4(8) to require the name, address, phone number, email address, and facsimile number of the applicable groundwater conservation district(s).

§§230.5 - 230.11

The commission adopts amendments to §§230.5 - 230.11 to make a conforming citation where the plat applicant "must" now follow 30 TAC Chapter 230 rules, rather than "may" or "shall" follow 30 TAC Chapter 230 rules. The word "must," now replaces "may" and "shall," throughout §§230.5 - 230.11. Additionally, the commission adopts amendments that make conforming changes where these sections reference the provisions modified at §230.1 and §230.3.

Section 230.5(6) is adopted with changes to the proposed text to replace "which" with "must."

§230.8(a) is adopted with changes to the proposed text to add the TCEQ form number after the form title.

§230.10(c) is adopted with changes to the proposed text to clarify the information needed to determine the parameters of the aquifer(s) being considered to supply water to the proposed subdivision.

§230.11(b) is adopted with changes to the proposed text to replace "basis" with "conditions."

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in consideration of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to implement legislative changes enacted by SB 2440, which requires groundwater certification during the platting process.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, nor the public health and safety of the state or a sector of the state. The cost of complying with the adopted rule is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to TGC, §2001.0225 because it does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). There are no federal standards governing groundwater certification in the plat application and approval process. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking 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. Finally, the adopted rulemaking is not an adoption of a rule solely under the general powers of the commission, as SB 2440 requires the adopted rules.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the rulemaking adoption and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rulemaking is to implement legislative changes enacted by SB 2440, which requires groundwater certification during the platting process, with certain exceptions. The adopted rulemaking substantially advances this purpose by amending the Chapter 230 rules to incorporate the new statutory requirements.

Promulgation and enforcement of this adopted rule will be neither a statutory nor a constitutional taking of private real property. The adopted rule does not affect a landowner's rights in private real property because this rulemaking does not relate to nor have any impact on an owner's rights to property. The adopted rule will primarily affect landowners who plan to use only groundwater to supply water for subdivisions. This will not be an effect on real property. Therefore, the adopted rulemaking will not constitute a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §§29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the Consistency with the Coastal Management Program during the public comment period. No comments were received on the Consistency with the Coastal Management Program.

Public Comment

The commission held a public hearing on June 24, 2024 and the comment period closed on June 25, 2024. The commission received comments from Approach Environmental (Approach), Bluebonnet Groundwater Conservation District (GCD), CenterPoint Committee for Growth and Progress (CPCGP), Clearwater Underground Water Conservation District (CUWCD), Environmental Defense Fund (EDF), Greater Edwards Aquifer Alliance (GEAA), Headwaters GCD, Hill Country Alliance (HCA), Kerr County Engineering (Kerr County), Middle Trinity GCD (MTGCD), Northern Trinity GCD (NTGCD), Parker County Commissioners Court (Parker County), Prairielands GCD, Texas Alliance of Groundwater Districts (TAGD), Texas Association of Builders (TAB), Texas Groundwater Association (TGWA), Texas Rural Water Association (TRWA), Upper Trinity GCD (UTGCD), and Wise County Commissioners Court (Wise County).Response to Comments

Miscellaneous

Comment 1

TAGD, Upper Trinity GCD, and Prairielands GCD expressed their support for removing the form content language from the rule and providing a separate form that can be updated.

Response 1

The commission acknowledges this comment.

Comment 2

Prairielands GCD requested the rule set out the waiver criteria within the language of the rule, commenting that many platting authorities, applicants, and technical professionals will only look at the rule for guidance rather than the statute.

Response 2

The commission disagrees with this comment. The commission amended this section to eliminate the applicability provisions because those are established by Local Government Code (LGC), §§212.0101(a), (a)(1), and (a)(2) and §§232.0032(a), (a)(1), and (a)(2). The statute only identifies two charges for TCEQ: develop rules to establish the form and content of a certification to be attached to a plat application; and require a plat applicant to transmit certain information to the Texas Water Development Board and any applicable groundwater conservation district(s). Therefore, it is appropriate to reference the LGC in the rule rather than including specific applicability criteria in the rule. Additionally, since the waiver criteria are set out in the statute, it is appropriate that the rule reference the LGC rather than include specific criteria. No change was made in response to this comment.

Comment 3

Prairielands GCD commented that the rule should clarify that a waiver for subdivisions supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer must be determined based on the boundaries of those aquifers as delineated by TWDB.

Response 3

The commission disagrees with this comment. As discussed in Response 2, the waiver requirements in the statute are part of the applicability requirements that were removed from the rule, as the statute only directs the commission to develop a rule establishing the form and content of the groundwater availability certification form. No change was made in response to this comment.

Comment 4

UTGCD requested that TCEQ correct a statement in the "Background and Summary of the Factual Basis for the Proposed Rules" section of the rulemaking to remove the term "primary" from the phrase "when the groundwater beneath the land serves as the primary source of water supply."

Response 4

The commission agrees with this comment and removed the word "primary" to be consistent with the language in LGC §§212.0101(a) and 232.0032(a).

Comment 5

Approach Environmental requested TCEQ add the constant drawdown pumping test method to the rule, which currently includes only a constant rate pumping test. The commentor stated that the constant drawdown method may be especially useful in low yield formations, fractured rock, or where the available drawdown is limited.

Response 5

Modification of this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. However, the commission did review the references provided and notes that in a constant drawdown aquifer test, the transmissivity estimate is within an order of magnitude; and the determination of the coefficient of storage cannot be accepted as it is highly sensitive to experimental error. The constant drawdown aquifer test would not be an appropriate method to add to the rule.

Comment 6

Bluebonnet GCD and GEAA requested the rule incorporate the latest TWDB-approved groundwater availability model. Bluebonnet GCD stated that the recent models incorporate the best available science and are beneficial because they account for a longer time span of 50 years, as opposed to 30 years described in 30 TAC Chapter 230. In addition, the Bluebonnet GCD stated that these models should be recognized within the rule or on the Groundwater Availability Certification form. GEAA stated they strongly support using the best available science within the Groundwater Availability Certification process and recommended TCEQ insert language requiring the use of the most current TWDB-approved groundwater availability model during the certification process, prior to approval.

Response 6

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this

comment. When developing the Groundwater Availability Certification, the licensed professional engineer or licensed professional geoscientist should determine which available information should be included.

Comment 7

Two commentors requested changes to the rule to assess cumulative impacts to groundwater:

Bluebonnet GCD requested that the rule require applicants to identify the cumulative impact of single wells on multiple subdivision lots as part of the Groundwater Availability Certification. Examples of cumulative impacts include drawdown, well interference, and subsidence, which could result in a need to tie into a PWS or find a new water supply. The commentor mentioned the Wilmeth Plat Analysis as an example that could be used on any scale of subdivision, stating that it includes common practices and techniques of professional engineers and professional geoscientists and relies on readily available data from groundwater availability models, which are not recognized in the current rule.

GEAA recommended TCEQ require a cumulative impacts assessment during the Groundwater Availability Certification process, prior to approval. GEAA stated that this impacts assessment should include an analysis of the cumulative impact of single wells across multiple subdivision lots and the impact of residential and non-residential development outside of the proposed subdivision on the availability of groundwater supplies.

Response 7

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes that cumulative impacts are a concern and encourages GCDs and TWDB to monitor incoming Groundwater Availability Certifications submitted by licensed professional engineers (PEs) or licensed professional geoscientists (PGs).

Comment 8

Clearwater UWCD requested TCEQ remove the requirement for drilling and completing an observation well from §230.8(c).

Response 8

Removing this requirement from the rule is outside of the scope of this rulemaking. No change was made in response to this comment. The commission disagrees with this requested amendment because an observation well is needed to determine the coefficient of storage. Estimating the coefficient of storage for a Groundwater Availability Certification is not sufficient.

Comment 9

EDF and HCA commented that given the increased pressure on groundwater resources in rural Texas and the fact that groundwater is often the only source of water for many rural communities as well as for agriculture, it is critical that the Groundwater Availability Certification rules be strengthened to provide local governments and developers with accurate groundwater data and information to make informed decisions about whether there is sufficient groundwater to accommodate development.

Response 9

The scope of this rulemaking was limited to the implementation of SB 2440, 88th Texas Legislature, and these comments are outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes the importance of groundwater in rural Texas and asserts that the existing requirements are sufficient for the licensed professional engineer or geoscientist to determine if sufficient groundwater is available. The commission encourages platting authorities and developers to work with applicable local groundwater conservation districts, TWDB, the licensed PE or PG, and other professionals to determine whether there is sufficient groundwater available for the subdivision.

Comment 10

EDF recommended that counties, especially those in PGMAs, be allowed in this rule to require new developments to prove long-term groundwater sustainability, not just 30-year water availability, so that the groundwater resources of Texas, and the unique communities that rely on them, can be preserved for multiple generations to come.

Response 10

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 11

Several commentors requested changes to the existing rule to reflect that the rule is no longer optional but required. Examples are to replace "shall" with "must," where appropriate; and to remove the phrase "if required by the municipal or county authority" when referring to delivery of the groundwater availability certification or supporting data.

Response 11

The commission acknowledges these comments and notes that the proposed rule package replaced "shall" with "must" throughout. No additional changes were made to the adopted rule package.

Comment 12

EDF suggested clarifying that all data, calculations, and information shall be provided in a format that allows for the replication of results (§§230.1(c), 230.6(d), and §230.8(d)).

Response 12

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The rule (§230.3) requires that a licensed professional geoscientist or licensed professional engineer prepare and sign the Certification of Groundwater Availability for Platting, which effectively attests to the accuracy and replicability of the information.

Comment 13

CPCGP commented that "full build out" assumptions are likely to be inadequate if focused only on the new subdivision and not the broader existing subdivision in which the new subdivision is located. For example, if every owner in an existing subdivision were to further subdivide their lots, then "full build out" would look quite different. At a minimum, CPCGP stated that this should be addressed in the assumptions where new development is the result of subdividing existing development.

Response 13

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission understands that in some cases the full build-out assumptions may be inadequate for the reasons listed.

However, this issue is site-specific and should be resolved by the applicant, the platting authority, and the licensed professional engineer or licensed professional geoscientist who certifies the Groundwater Availability Certification.

Comment 14

CPCGP requested that TCEQ clarify how the proposed rules relate to a public water system (PWS). The commentor stated that some developers are avoiding the requirements with "workarounds," using historical, non-site specific, and irrelevant data; and stated that a groundwater availability study under 30 TAC Chapter 230 should be prepared for all PWSs.

Response 14

A change to this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

To clarify, 30 TAC §230.10(c), requires subdivisions utilizing individual water wells on individual lots to meet the requirements described in §230.8, relating to Obtaining Site-Specific Groundwater Data; but §230.8 also states that if the proposed method of water distribution is expansion of an existing PWS or installation of a new PWS, then site specific groundwater data must be developed under the requirements of 30 TAC Chapter 290, Subchapter D. The requirement to follow 30 TAC Chapter 290, Subchapter D rules for PWSs are in lieu of - and not in addition to - 30 TAC Chapter 230.

Regarding the request to require a study under 30 TAC Chapter 230 for all public water systems, the commission recognizes that PWSs have different requirements than private well owners. 30 TAC Chapter 290 requires that PWS wells meet strict well construction guidelines. In addition, the rules require each proposed new PWS to submit an engineering report describing the project and how the PWS plans to meet TCEQ's required minimum water system capacities. PWSs are also subject to periodic inspections by TCEQ, which includes verifying well conditions and capacity.

Comment 15

CPCGP commented that TCEQ could ask TWDB to keep a database of all groundwater availability studies, which could be used for planning and for use by developers to support new subdivisions where relevant provisions apply.

Response 15

This request is outside of the scope of this rulemaking. No changes were made in response to this comment. TCEQ forwarded this comment and request to TWDB.

§230.1.

Comment 16

TAGD, Middle Trinity GCD, and Northern Trinity GCD suggested TCEQ add language to this subsection regarding obtaining a waiver.

Response 16

See Response 2. No change was made in response to this comment.

Comment 17

Middle Trinity GCD requested TCEQ add "Purpose and.." before the word "Applicability" to the title of this section.

Response 17

In the rule proposal, the commission removed the specific applicability requirements and updated the title of this section to be "General." A subsection entitled "Purpose" was added to §230.1(a) during the rule proposal. No changes were made in response to this comment.

Comment 18

CPCGP recommended that in §230.1, the following language be used:

"(a) Purpose. This chapter establishes the form and content of a certification to be attached to a plat application that requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply."

Response 18

The commission agrees that adding language from the statute in this introductory paragraph would add clarity, and has updated §230.1(a) as follows:

"(a) Purpose. This chapter establishes the form and content of a certification to be attached to a plat application under Texas Local Government Code, §212.0101 or §232.0032, which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply."

Comment 19

Texas Rural Water Association (TRWA) requested that §230.1(b) be revised to add §230.1(b)(3), to require that copies of any information provided to TWDB and applicable GCD(s) must also be provided to the applicable water utility. TRWA comments that developers do not routinely consult with the water utilities regarding groundwater availability and accessibility, and that the utilities need sufficient notice of a possible increase in groundwater demand. TRWA also requested that TCEQ add §230.1(c)(3) to require the plat attesting form be submitted to the applicable water utility.

Response 19

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission encourages the commentor to work with TWDB, applicable groundwater conservation districts, platting authorities, and utilities to share information.

Comment 20

TAGD requested edits to §230.1(b), relating to "Use of this chapter," including removing the phrase "If required by the municipal or county authority," from the first sentence and adding to the end of the last sentence the phrase "which may include, among other things, production limitations and well spacing requirements."

Response 20

In the rule proposal, the commission removed the applicability provisions described in §230.1(b) and instead referred to the LGC. No changes were made in response to this comment.

Comment 21

TAGD requested that TCEQ revise §230.1(c) (§230.1(b)) in the proposed rule) to include "Verification and" before the phrase "Transmittal of data."

Response 21

The commission disagrees with this comment. The commission asserts that adding the phrase "verification and" does not add clarity to the rule and therefore no change was made.

Comment 22

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested that §230.1(c)(2) (§230.1(b)(2) in the proposed rule) be revised to require the plat applicant to attest that the information provided to meet the rule requirements is accurate and that a completed copy of the form must be submitted as part of an applicant's plat application and submitted to the platting authority prior to approval of the plat application.

Response 22

The commission disagrees with this comment. The rule at §230.1(c) requires the Plat Attesting Form (TCEQ-20983) be submitted with the groundwater availability certification. The current form requires the plat applicant to attest that the required information has been provided in accordance with 30 TAC Chapter 230. This form does not currently have a location for a signature, so for clarity the Plat Attesting Form (TCEQ-20983) will be updated to include a location for the plat applicant's signature following the certification statement. The commission notes that a Texas licensed professional engineer or licensed professional geoscientist must sign the Groundwater Availability Certification for Platting form (TCEQ-20982), which effectively attests to the accuracy of the information. No additional changes were made in response to the comment.

§230.2.

Comment 23

Middle Trinity GCD and Northern Trinity GCD requested TCEQ revise the definition of "Applicable groundwater conservation district or districts" to remove (A) related to having authority to regulate well spacing.

Response 23

The commission disagrees with this comment. The definition for "applicable groundwater conservation district or districts" used in the rule is consistent with the definition for "district" in the Texas Water Code (TWC), Chapter 36, related to Groundwater Conservation Districts. The statute, TWC §36.001(1), defines "District" as "any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both." No changes were made in response to this comment.

Comment 24

TRWA requested TCEQ add the following definition, as part of their general comment to require applicants to submit the groundwater platting application to TWDB and applicable GCDs:

"(2) Applicable Water Utility - any entity that has the authority to provide retail water service to any part of the plat applicant's proposed subdivision."

Response 24

See response to comment 19. No change was made in response to this comment.

Comment 25

TAGD requested that the following language be added to the end of the definition for "Aquifer test" at §230.2(3):

"(3) ... All aquifer tests required under this chapter, including the drilling, construction, operation and conversion or closure of any wells used to conduct such aquifer test, must be completed in accordance with the rules of the Texas Department of Licensing and Regulation and the applicable groundwater conservation district or districts."

Middle Trinity GCD and Northern Trinity GCD also requested TCEQ revise this definition, and requested the following addition:

"(3) ... All aquifer tests required under this chapter must be completed in accordance with the rules of the applicable groundwater conservation district or districts."

Response 25

Modifying this definition is outside of the scope of this rulemaking. No changes were made in response to this comment. Applicants must follow any relevant rules, including those of the Texas Department of Licensing and Regulation and the applicable GCD(s); but it is not necessary to include such statements in this rule.

Comment 26

The following commentors provided specific language for TCEQ to consider as a definition for credible evidence related to obtaining a waiver, referencing §230.1 of the proposed rule: Middle Trinity GCD, Texas Alliance of Groundwater Districts (TAGD), Bluebonnet GCD, Environmental Defense Fund (EDF); Greater Edwards Aquifer Alliance (GEAA), Hill Country Alliance (HCA), Clearwater UWCD, Prairielands GCD, and Northern Trinity GCD.

TAGD, Bluebonnet GCD, EDF, GEAA, HCA, and Northern Trinity GCD requested TCEQ add the following definition:

"at a minimum the results of an aquifer test demonstrating sufficient groundwater availability that was completed no more than 3 years before the date of the plat application within a Â¼-mile radius of the proposed subdivision and was conducted in compliance with any applicable rules of any groundwater conservation district in which the proposed subdivision will be located, and any other information required under the rules of such groundwater conservation district and the municipal or county authority, the municipal or county authority determines that sufficient groundwater is available and will continue to be available to the subdivision tract of land."

In addition, TAGD commented that the proposed definition would ensure the evidence presented for a waiver would be recent and relevant to the specific location of the subdivision. Bluebonnet GCD requested that in the absence of adding a definition for credible evidence, TCEQ provide a list of factors or characteristics that could be considered in determining whether evidence provided by plat applicants is credible. Bluebonnet GCD commented that even a general outline would be useful but maintains some type of framework is important. EDF and HCA also commented that without guidance, counties and municipalities do not have the experience or expertise to evaluate what may constitute credible evidence.

Clearwater UWCD requested TCEQ add the following definition of credible evidence:

"A written statement from the applicable groundwater conservation district stating "sufficient groundwater is available and will continue to be available to the subdivided tract of land." If the tract is not within a groundwater conservation district, a report

on the local groundwater availability prepared by a licensed professional engineer or geoscientist with a conclusion stating "sufficient groundwater is available and will continue to be available to the subdivided tract of land."

Middle Trinity GCD requested that credible evidence be defined as follows:

"A written statement from the applicable groundwater conservation district confirming that "sufficient groundwater is available and will continue to be available to the subdivided tract of land." If the tract is outside a groundwater conservation district, a report on local groundwater availability prepared by a licensed professional engineer or geoscientist must conclude that "sufficient groundwater is available and will continue to be available to the subdivided tract of land."

Prairielands GCD requested that the rule establish a minimum statewide standard for credible evidence and commented that without such a standard, counties and municipalities may be lobbied by plat applicants to bypass costly Groundwater Availability Certification requirements, possibly leaving homeowners without adequate groundwater supplies. They assert that during the legislative process for this rule, the language in the statute was left open-ended to gain consensus, with the expectation that the rulemaking would address such outstanding issues. Prairielands GCD also commented that credible evidence should require, at a minimum, a pump test, conducted on the tract proposed to be subdivided, utilizing a well that is no more than six months old. Similar to the paraments established in §230.8 for conducting aquifer testing, the district stated the rule should establish certain parameters for conducting pump tests and allow the results to be considered as credible evidence of sufficient groundwater availability.

Response 26

The commission disagrees with these comments. No changes were made in response to this comment. The LGC §§212.0101(a) and 232.0032(a) establish the requirement for plat applicants to include information on groundwater availability as part of their application. LGC §§ 212.0101(a-1) and 232.0032(a-1) provide an option for the platting authority (municipality or county) to waive the Groundwater Availability Certification requirements in certain cases if, based on credible evidence of groundwater availability in the vicinity of the proposed subdivision, the municipal authority or commissioner's court determines that sufficient groundwater is available and will continue to be available to the subdivided tract of land.

The charge to the commission under LGC §§212.0101(b) and (c) and §§232.0032(b) and (c) is limited to adopting rules that establish the form and content of a Groundwater Availability Certification and that require transmittal of specific information to the Texas Water Development Board and any applicable groundwater conservation district. The statute does not charge the commission with further defining either applicability or waiver requirements, and "credible evidence" is a part of waiver requirements. The platting authority must determine whether a waiver is appropriate, including what constitutes credible evidence.

Comment 27

Upper Trinity GCD, Parker County Commissioners Court (PCCC), and Wise County Commissioners Court (WCCC) requested TCEQ provide guidance on how to consider "credible evidence" for the purpose of obtaining a waiver. Upper Trinity GCD additionally encouraged TCEQ to at least outline a few items that could be submitted as credible evidence, believing it would help many people make decisions and would help landowners exercise their property rights and develop their property with the assurance to future purchaser there still is water below the property.

Response 27

See Response 26. No changes were made in response to this comment.

Comment 28

Texas Groundwater Association (TGWA) commented that any statements of credible evidence be addressed by the local GCD, or by TWDB in jurisdictions which do not have a GCD. TGWA commented that they recognize the need for effective groundwater management to ensure future availability and desire that access to groundwater be treated fairly and with minimal government intervention.

Response 28

See Response 26. No change was made in response to this comment.

Comment 29

TAB commented that they oppose including a definition for "credible evidence" and that it is beyond the scope of Texas statutes.

Response 29

See Response 26. No change was made in response to this comment.

Comment 30

Kerry County Engineering requested TCEQ add definitions for "expansion of an existing public water supply system" and "groundwater under the subdivision."

Response 30

Adding definitions for "expansion of an existing public water supply system" and "groundwater under the subdivision" is outside of the scope of this rulemaking. No changes were made in response this this comment. 30 TAC Chapter 290, Subchapter D defines public water system (PWS). The commission maintains that an "expansion" of a PWS as well as "groundwater under the subdivision" are self-evident and do not require further definition.

Comment 31

Prairielands GCD requested TCEQ add a definition for pump test to the rule:

"Pump test - a test in which a well, drilled within 6 months of the date of the plat application on the tract proposed to be subdivided, is pumped at a controlled rate to assess hydraulic properties of an aquifer system, the results of which shall include water-levels prior to pumping and flow rate, drawdown, and recovery conditions at 5 minute increments (or less) for the entirety of the pump test and until water-levels have recovered to at least 95% of static water-levels."

Response 31

Adding a definition for "pump test" is outside of the scope of this rulemaking. No changes were made in response this this comment. The commission asserts that adding and defining the term "pump test" to the current rule is not necessary. The rule includes a definition for aquifer test, which is sufficient for the purpose of this rulemaking.

§230.3.

Comment 32

CPCGP recommended the following update to §230.3(c):

"Submission of information. The certification of adequacy of groundwater under the subdivision required by this chapter must be submitted to the following..."

Response 32

The commission agrees and has added the requested language to §230.3(c).

Comment 33

Bluebonnet GCD requested that TCEQ update the Groundwater Availability Certification for Platting form to add "Groundwater Management Area Desired Future Condition adoption, and groundwater availability model" to the note on number 18 of the form: "General Groundwater Resource Information (30 TAC §230.7)."

Response 33

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, this question on the Groundwater Availability Certification for Platting form includes information that a user may refer to for obtaining aquifer information. The commission agrees that the requested reference could be helpful and therefore it was added as a reference to the note on number 18 of the Groundwater Availability Certification for Platting form (TCEQ-20982). No change was made to the rule in response to this comment.

Comment 34

Bluebonnet GCD commented that the general principles in the following sentence from §230.8(c) could be applied within the Groundwater Availability Certification for Platting form: "The aquifer test must provide sufficient information to allow evaluation of each aquifer that is being considered as a source of residential and non-residential water supply for the proposed subdivision." Bluebonnet GCD encouraged emphasizing and focusing on the evaluation of potential impacts such as drawdown (individually and cumulatively), subsidence, and spring flow; and states that the collection and review of this information in the planning state should provide clarity on the best practice to implement, individual wells and their minimum well depth or centralized distribution system and minimize costly alternative supply installation after the fact.

Response 34

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission agrees that including the referenced sentence from §230.8(c) may be helpful to include on the form and will update the form to include this information. No change was made to the rule in response to this comment.

Comment 35

Related to §230.8(c)(8), Bluebonnet GCD stated that it is critical to adequately review and analyze potential impacts of the proposed subdivision in order to demonstrate groundwater availability. Bluebonnet GCD suggested that their district's guidance documents could provide standards and expectations for the investigations and reports to inform review and analysis. The district commented that these general principles could be applicable and applied within the TCEQ form.

Response 35

Adding the district's documents is outside the scope of this rulemaking. No change was made to the form or the rule in response to the comment. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and linking existing guidance documents such as the district's.

Comment 36

CPCGP and Headwaters GCD commented on the choice of "Yes," "No," and "Not applicable" on the Groundwater Availability Certification for Platting Form (TCEQ-20982). CPCGP noted that in Questions 29 through 35 of the form, a certifying engineer is given the choice to claim either "yes" or "no" (or N/A) when asked if the required aquifer parameters under §230.10(c) have been determined; and commented that the "No" and "N/A" choices should be removed from the form given their comments on §230.10(c), the changes made by TCEQ at §230.7(b), and the groundwater availability requirement that must be determined under §230.10(d) for both individual and PWS. Similarly, Headwaters GCD stated they have seen Table 8 (§230.3) included in water availability studies where the boxes are filled in "not applicable," and state that more site specific and current data is needed on both existing and new PWSs.

Response 36

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission agrees that the licensed professional engineer or licensed professional geoscientist responsible for the Groundwater Availability Certification should provide an explanation for any question on the form where they answered "No" or "Not Applicable." In response to the comment, the commission will update the Certification of Groundwater Availability Form (TCEQ-20982) to require the answer "No" or "Not Applicable" be explained where appropriate. No changes were made to the rule in response to this comment.

Comment 37

CPCGP states that the prior version of the Certification of Groundwater Availability for Platting form asked: "34. Has the anticipated method of water delivery, the annual groundwater demand estimates at full build out, and geologic and groundwater information been considered in making these determinations? Yes/No" and notes that this provision is not included on the new form.

Response 37

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission acknowledges that this item was unintentionally omitted and has corrected the form to include the original item 34. No changes were made to the rule in response to this comment.

Comment 38

CPCGP notes that a correction should be made to question 30 of the form, as it refers to items "a. through i. below;" however, the form's questions only go through "h."

Response 38

The Groundwater Availability Certification for Platting form is no longer incorporated into the rule. However, the commission acknowledges this typographical error and has made the noted correction to question 30 of the Groundwater Availability for Platting

Form (TCEQ-20982). No changes were made to the rule in response to this comment.

Comment 39

Bluebonnet GCD commented that with respect to §230.10(b), a critical consideration in groundwater availability determinations is the cumulative impact of wells over time and after full build out. Bluebonnet GCD stated that recommending minimum well depth and considering the cumulative impact will minimize the likelihood of well interference, localized drawdown, subsidence, and the need of a centralized distribution system to resolve these impacts in the future. The district also stated that addressing pumping concentration prior to construction would significantly alleviate stress and pressure on the property owner and stated that these general principles could be applicable and applied within the TCEQ form.

Response 39

Adding these technical requirements is outside of the scope of this rulemaking, and therefore the requirements cannot be included in the form. No changes were made in response to this comment. Also see Response 7.

Comment 40

In reference to §§230.10(c) & (d), Bluebonnet GCD commented that defining aquifer parameters is important, both to understanding the susceptibility to impacts in the project area and to assist the municipal or county authority in understanding groundwater availability. Bluebonnet GCD stated that their district guideline documents for preparing hydrogeologic reports could be used as a resource and noted that such an analysis would provide the extent that drawdown would affect all wells and would provide guidance on minimum well depth. Bluebonnet GCD commented that these general principles could be applied within the TCEQ form.

Response 40

Adding the district's documents is outside the scope of this rulemaking. No change was made to the form or the rule in response to the comment. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and linking existing guidance documents such as the district's.

Comment 41

Bluebonnet GCD noted the importance of groundwater availability determination, referencing §230.11(b), and stating that properly determining these conditions is very important and reviewing criteria to understand the potential impacts at the plat design phase can significantly reduce time, effort, and costs for construction and application. Bluebonnet GCD also stated that recommending minimum well depth is appropriate and helpful and provided information on their district guidelines on preparing hydrologic reports as a resource for both the platting authority and the developer. The commentor recommended that these general principles could be applied within the TCEQ form.

Response 41

Adding the district's documents to the form is outside the scope of this rulemaking. No change was made to the form or the rule in response to the comment. The commission notes that the comment appears to be addressing §230.11(a) and recognizes that sensible project development and best management practices are useful to understanding potential impacts of the plat design. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and linking existing guidance documents such as the district's. Also see Response 78 related to a clarification made to the adopted rule language.

§230.4.

Comment 42

TAGD, Middle Trinity GCD, and Northern Trinity GCD suggested adding contact information for the GCD to the list of general information that must be provided for a proposed subdivision under this chapter:

"(8) the name, address, phone number, and facsimile number of the applicable groundwater conservation district or districts and the name and email address of the general manager(s) of the district(s)."

Response 42

The commission agrees to add GCD contact information to the list of general information to be provided, and added the following language to §230.4(8), which differs slightly from the requested language:

"(8) the name, address, phone number, email address, and facsimile number of the applicable groundwater conservation district or districts."

Comment 43

Related to §§230.4(3)-(5), Kerr County questions the necessity of obtaining facsimile (fax) numbers as the industry standard currently is email.

Response 43

The commission acknowledges that email is a more common communication method and added email addresses in the proposed rule. However, the commission disagrees that facsimile numbers should be removed. The commission acknowledges that communication by fax is infrequent, but the commission will continue to receive such communications and notes that there may be occasion for a platting authority to send or receive information from an applicant by fax. No change was made in response to this comment.

§230.5.

Comment 44

Kerr County commented that the word "which" should be deleted from §230.5(6).

Response 44

The commission agrees and has removed "which" from the sentence in §230.5(6). A comma was also added after "provided."

Comment 45

TAGD requested TCEQ add a new §230.5(7) to the list of information that must be provided under this subchapter, and then move the paragraph to a new §230.5(8):

"(7) if the anticipated method of water distribution for the proposed subdivision requires a permit or permit amendment under the rules of the applicable groundwater conservation district, a description of how the proposed water supply and method of water distribution complies with Chapter 36, Texas Water Code, and the rules of the applicable groundwater conservation district or districts; and

(8) any additional information required by the municipal or county authority as part of the plat application."

Response 45

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission agrees that applicants must follow any relevant rules, including those of GCDs. However, as stated in Response 25, the commission maintains that it is not necessary to include such statements in this rule.

§230.6

Comment 46

TAGD requested that TCEQ revise §230.6(d) to require that "sources of information used, and calculations performed to determine the groundwater demand estimates as required by this section" be provided to the platting authority rather than just making the information available if requested. Middle Trinity GCD also asked that the phrase "if requested" be removed.

Response 46

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.7.

Comment 47

TAGD requested that the following sentence be added to the beginning of §230.7(b), related to "Geologic and groundwater information:"

"The current groundwater availability model approved by the Texas Water Development Board provides baseline geologic and groundwater information and shall be included, as supplemented by site-specific data, for consideration."

Response 47

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. While TWDB groundwater availability models have relevant data that could be used in preparing the Groundwater Availability Certification, the licensed professional engineer or licensed professional geoscientist who certifies the availability of groundwater should determine which available information should be included.

Comment 48

Bluebonnet GCD commented on §§230.7(b)(1) - (4) that geologic and groundwater information used in planning and designing the aquifer test should address potential impacts such as drawdown (individually and cumulatively), subsidence, and spring flow where applicable. Bluebonnet GCD recommended a source of this information and impact analysis in the district's *Guidelines for Submitting Data and Information and the Preparation of Hydrogeologic Reports in Support of Applications for the Permitted Use of Groundwater*, which describe a Phase I report that evaluates the impacts of pumping using existing data and the existing regional groundwater flow model of the area for the aquifer in which the well(s) is to be completed.

Response 48

Adding the district's documents is outside the scope of this rulemaking. No change was made to the rule in response to the comment. TCEQ may develop a list of resources that can be included on its webpage, which could include evaluating and linking existing guidance documents such as the district's. Also see Response 7.

§230.8.

Comment 49

Kerr County requested that "(TCEQ-20982)" be added as the second word of §230.8(a) for clarification purposes.

Response 49

The commission agrees with the comment and added a reference to the form number in §230.8(a).

Comment 50

Kerr County asked TCEQ's intent in requiring site-specific groundwater data to be developed under Chapter 290, Subchapter D when an expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision. The commentor noted that 30 TAC Chapter 290 does not require an observation well, nor are there requirements regarding previous pump tests. Kerr County also stated that while site-specific data generated from a Chapter 290 pump test allows one to calculate a transmissivity value, a storativity value cannot be calculated without an observation well.

Response 50

The commission acknowledges that the requirements of Chapters 230 and 290 are different; however, making this type of change is outside of the scope of this rulemaking. No changes were made in response to this comment. Also see Response 14.

Comment 51

Headwaters GCD commented that groundwater availability has become critical in Kerr County and the county is identified by TCEQ as a Priority Groundwater Management Area (PGMA). As a result, Headwaters GCD requests clarification on the form and content needed regarding existing and new PWSs. Headwaters GCD states that §230.8(a) is not clear as written and asks for confirmation whether the intent is to allow Section 290 Subchapter D in lieu of §230.8, or in addition to it. Headwaters GCD commented that bypassing §230.8 will potentially have a negative effect on Kerr County's groundwater resources.

Response 51

30 TAC §230.10(c) requires that aquifer parameters be determined under §§230.7 and 230.8 unless the development is going to be a part of a new or existing PWS, in which case 30 TAC Chapter 290 must be met. Also see Response 14. No change was made in response to this comment.

Comment 52

TAGD requested TCEQ add language to §230.8(a) as follows:

"(a) Applicability of section. This section is applicable only if the proposed method of water distribution for the proposed subdivision is individual water wells on individual lots. If expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision, site-specific groundwater data shall be developed under the requirements of Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems), rules of any applicable groundwater conservation district, and the information developed in meeting these re-

quirements shall be attached to the form required under §230.3 of this title (relating to Certification of Groundwater Availability for Platting)."

Response 52

See Response 25. No change was made in response to this comment.

Comment 53

In §230.8(b), related to the location of existing wells, TAGD requested to remove the word "known" before "existing, abandoned, ..." and requested that the following language be added to the end of the paragraph:

"All existing, abandoned, and inoperative wells within the proposed subdivision shall be identified, located, and mapped by on-site surveys. Existing well locations shall be illustrated on the plat required by the municipal or county authority. Such wells shall be identified with applicable well permit numbers from the applicable groundwater conservation district shall be provided. Any abandoned or inoperative wells must be reported to TDLR."

Response 53

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 54

In §230.8(c)(1), related to test well and observation well(s): TAGD requested that the following sentence be added to the end of the paragraph:

"Test and observation well(s) must be constructed, operated, and subsequently closed or converted in accordance with applicable rules of TDLR and any applicable groundwater conservation district."

Response 54

See Response 25. No change was made in response to this comment.

Comment 55

In §230.8(c)(3)(B), TAGD requested TCEQ add the following sentence to the end of the paragraph:

"The municipal or county authority may require additional log types to characterize the aquifer(s) for testing purposes."

Response 55

The commission notes that the existing paragraph includes the minimum requirements for a geophysical log, and that the licensed professional engineer or licensed professional geoscientist will be able to determine if additional logs are needed to properly characterize the aquifer. No change was made in response to this comment.

Comment 56

In §230.8(c)(4), related to well development and performance, TAGD and EDF requested TCEQ add the following sentence to the end of the paragraph:

"Test and observation well(s) must be constructed, operated, and subsequently closed or converted in accordance with the applicable rules of TDLR and any applicable groundwater conservation district."

Response 56

The commission agrees that applicants should comply with relevant rules, including those of TDLR and GCDs. As stated in Response 25, the commission maintains that it is not necessary to include such statements in this rule. No change was made in response to this comment.

Comment 57

In §230.8(c)(6), related to the duration of an aquifer test and recovery, TAGD and EDF requested the following sentences added before the final sentence of the paragraph:

"Aquifer tests shall be prohibited while nearby wells are pumping and during significant rain or recharge events. To ensure water levels are static, pre-test water-level measurements shall be conducted for at least 7 days prior to commencing an aquifer test under this section."

Response 57

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 58

TAGD requested to add the following phrase to the beginning of §230.8(c)(6)(A), related to the duration of aquifer test and recovery: "*Unless expressly provided otherwise by rules of the applicable groundwater conservation district."* In §§230.8(c)(7)(A) and (B), related to the use of existing wells and aquifer test data, TAGD requested to add the following phrase to the beginning of each paragraph: "*Unless expressly prohibited by rules of the applicable groundwater conservation district*."

Response 58

See Response 25. No change was made in response to this comment.

Comment 59

EDF, CPCGP, and TAGD provided comments regarding the use of existing aquifer tests:

EDF requested TCEQ add the following language to §230.8(c)(7):

"Use of existing aquifer tests and data should be time limited: (ii) the previous test was performed no more than 3 years before the date of the plat application;" and (vi) aquifer test data from the pumping well and observation well(s) from the previous test are available and calculations of hydraulic properties can be repeated and verified, which data and calculations shall be provided with the submission in accordance with 230.1(c)."

CPCGP requested that a new condition be added to the rule to prevent outdated information from being used, and suggested the following language be added as a new item §230.8(c)(7)(v):

"(v) the previous date of the TAC 230 test used is no older than 5 years from the anticipated certification date of the current TAC 230 groundwater availability study."

TAGD requested the following language be added as a new item (ii) under §230.8(c)(7):

"(ii) the previous test was performed no more than 3 years before the date of the plat application;"

Response 59

Adding these technical requirements is outside of the scope of this rulemaking. No changes were made in response to this com-

ment. The commission recognizes that in most cases, recent tests are necessary to determine groundwater availability. The licensed professional geoscientist or licensed professional engineer is encouraged to use data that matches current groundwater conditions.

Comment 60

TAGD requested that TCEQ add a new item §230.8(c)(7)(B)(vi), relating to the use of existing wells and aquifer test data:

"(vi) aquifer test data from the pumping well and observation well(s) from the previous test are available and calculations of hydraulic properties can be repeated and verified, which data and calculations shall be provided with the submission in accordance with 230.1(c)."

Response 60

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission understands the benefit of demonstrating why a previous aquifer test may be appropriate but asserts that the licensed professional geoscientist or licensed professional engineer should take the appropriate information into account when preparing the groundwater availability certification for platting.

Comment 61

In §230.8(c), TAGD requested that the following language be added to the paragraph on aquifer testing:

A municipal or county authority responsible for approving plats is encouraged to consult with any applicable groundwater conservation district in establishing any site-specific aquifer test requirements.

EDF provided similar comments to encourage applicants to consult with GCDs, noting that GCDs can often provide support.

Response 61

TCEQ encourages platting authorities to communicate with GCDs and others who may have useful information on reviewing applications related to the certification of groundwater availability; but asserts that it is not necessary to include such statements in this rule. No change was made in response to this comment.

Comment 62

TAGD and EDF requested to add the following sentence to the end of §230.8(c)(7):

"A municipal or county authority responsible for approving plats is encouraged to consult with any applicable groundwater conservation district, or the TWDB if there is no groundwater conservation district, to determine the suitability of accepting the results of a previous aquifer test in lieu of a new test."

Response 62

See Response 61. No change was made in response to this comment.

Comment 63

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ update 30 TAC 230.8(c)(7)(A) and (B) to add the following phrase to the beginning of this paragraph:

Unless expressly prohibited by rules of the applicable groundwater conservation district...

Response 63

See Response 25. No change was made in response to this comment.

Comment 64

Regarding §230.8(c)(8), TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ add a phrase to ensure applicants coordinate with applicable GCDs to determine if additional information is needed. Specifically, the commentors requested the edits to the final sentence of this paragraph as follows:

"...To determine if additional information is needed, in coordination with the applicable groundwater conservation district or districts, best professional judgement must be used to consider these assumptions, the site-specific information derived from the aquifer test required by this section, the size of the proposed subdivision, and the proposed method of water delivery."

Response 64

See Response 61. No change was made in response to this comment.

Comment 65

TAGD, Northern Trinity GCD, Middle Trinity GCD, and EDF requested that §230.8(d) be revised to replace the phrase "made available" with "provided" and to delete the phrase "if requested."

Response 65

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.9.

Comment 66

TAGD requested TCEQ add volatile organic compounds and radionuclides, in counties where testing for naturally occurring radionuclides is required under 30 TAC Chapter 290. Middle Trinity GCD requested TCEQ add testing for total coliform bacteria, benzene, and Northern Trinity GCD asked that benzene be added. In addition, TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ add testing for radionuclides in counties where testing for naturally occurring radionuclides is required under 30 TAC Chapter 290.

Response 66

Adding these technical requirements is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 67

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested the rule include specific wording as a new §230.9(a)(4) regarding how sampling information should be submitted: including the sample date, collection entity, statement of reliability, and the name of the testing laboratory, if applicable. TAGD requested that the information be submitted in a spreadsheet or table format.

Response 67

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes that an organized format for the submitted water quality data may assist platting authorities in reviewing applications, and recommends applicants communicate with the

platting authority prior to submitting an application to determine how best to submit the required information.

Comment 68

TAGD, Northern Trinity GCD, and EDF requested that §230.9(b) be revised to require that the information, data, and calculations required in this section be provided to the platting authority rather than just making the information available if requested.

Response 68

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.10.

Comment 69

TAGD requested that §230.10(a) be revised to add the underlined phrase to the last sentence of the paragraph:

"Groundwater availability shall be determined for ten years, 30 years, the joint planning period for the current adopted desired future conditions for aquifers under Section 36.108 of the Texas Water Code, and for any other time frame(s) required by the municipal or county authority."

Response 69

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

Comment 70

TAGD and Northern Trinity GCD requested that §230.10(c) require the listed aquifer parameters to be provided in a spreadsheet format, and Middle Trinity GCD requested that the information be provided in a spreadsheet or a tabular format.

Response 70

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission recognizes the usefulness of a common format to report aquifer parameters to different entities and encourages the platting authority and licensed professional engineer or licensed professional geoscientist to work with the GCDs and TWDB to determine the best format. The commission also encourages TAGD to work with member districts to develop a format that could be used to report Groundwater Availability Certification data.

Comment 71

CPCGP commented that the rule should require current and site-specific data through drilling to determine the status of the aquifer underlying the new subdivision for both individual wells and for PWS. CPCGP stated that they understand developers may desire to avoid drilling a new well but maintains that the rule is a minimum standard requirement that should be applied for development to proceed. CPCGP requests the following clarification to §230.10(c):

"Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must be determined utilizing the information considered under 230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required (1) under §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or (2) under Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) for new and existing public water systems; and reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982)..."

Response 71

The commission agrees that updating the referenced paragraph would clarify that determination of aquifer parameters must be made under §§230.7 and 230.8 unless the development is going to be a part of a new or existing PWS. The language of §230.10 was updated as provided, with one change. The commission added the phrase "one of the following" to clarify there are different requirements for subdivisions using individual water wells for each lot versus PWSs. Section §230.10(c) was revised as follows:

"Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must be determined utilizing the information considered under §230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required under one of the following: (1) §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or (2) Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) for new and existing public water systems. The parameters must be reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982)..."

Comment 72

CPCGP commented that §230.10(c) is not clear on what "or acceptable modifications thereof" means regarding the determination of aquifer parameters. CPCGP requested the phrase be further clarified or removed.

Response 72

The commission disagrees with this comment. Licensed professional engineers and licensed professional geoscientists should be aware of groundwater industry standards and the commission asserts that the rule is clear about how and which methods should be used. No changes were made in response to this comment.

Comment 73

TAGD requested TCEQ add the underlined language to §230.10(d)(3)(B) related to well interference:

"(B) determine a recommended minimum spacing limit between individual wells, minimum well depth, and minimum well yields from the wells that will allow for the continued use of the wells for the time frames identified under subsection (a) of this section."

Response 73

Adding this technical requirement is outside of the scope of this rulemaking. No changes were made in response to this comment. The commission agrees that finding and providing the recommended minimum well depth is an important part of designing an efficient well, and that the licensed professional engineer or licensed profession geoscientist preparing the groundwater availability certification should utilize appropriate resources to prevent well interference.

Comment 74

TAGD, Middle Trinity GCD, and Northern Trinity GCD requested TCEQ add the following language as a new paragraph §230.10(f):

"(f) Determination of regulatory parameters. Groundwater availability determinations shall take into account the rules of the applicable groundwater conservation district or districts, including but not limited to rules regulating certain aquifer formations, well depth, well spacing, and well permitting to reliably determine whether the available groundwater is in fact accessible under the rules of the applicable groundwater conservation district or districts. If the proposed subdivision is to be located within a designated priority groundwater management area under Chapter 35 of the Texas Water Code, then groundwater availability determinations shall take into account any water availability requirements adopted by the county to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply pursuant to §35.019 of the Texas Water Code (Water Availability)."

Response 74

See Response 25. No change was made in response to this comment.

Comment 75

TAGD, Upper Trinity Groundwater Authority, Middle Trinity GCD, EDF, and Northern Trinity GCD requested that §230.10(f) be revised to replace the phrase "made available" with "provided" and to delete the phrase "if requested."

Response 75

Adding this requirement is outside of the scope of this rulemaking. No changes were made in response to this comment.

§230.11.

Comment 76

TAGD requested §230.11(a) be revised by adding the following underlined language to the existing text:

"(a) Groundwater availability and usability statements. Based on and citing to the information developed under § 230.10 of this title (relating to Determination of Groundwater Availability), the following information shall be provided as specified in § 230.3(c) of this title (relating to Certification of Groundwater Availability for Platting):"

Response 76

The commission disagrees with this comment. The commission notes that the Groundwater Availability Certification is based on information developed under §230.10, which must be provided to the platting authority as part of the report from the licensed professional engineer or licensed professional geoscientist. The phrase "and citing to" does not provide added clarity. No change was made in response to this comment.

Comment 77

TAGD, Northern Trinity GCD, and Middle Trinity GCD suggested specific language be added as a new §230.11(a)(6):

"(6) other parameters necessary to ensure compliance with the rules of the applicable groundwater conservation district(s) or groundwater availability rules adopted by a county in a designated priority groundwater management area."

Response 77

See Response 25. No change was made in response to this comment.

Comment 78

CPCGP recommends that §230.11(b) be revised with the following language in order that engineers specifically address development from an area outside the small new subdivision that cannot be predicted that will affect the storage of water in the aquifer, as well as short-term and long-term impacts from climatic variations (e.g., droughts, severity of droughts, etc.) on the aquifer:

"These basis must include, but are not limited to, uncontrollable and unknown factors such as:"

Response 78

The commission asserts that the licensed professional engineer or licensed professional geoscientist preparing and certifying the Groundwater Availability Certification would be able to make the proper determinations. No change was made in response to this comment; however, the term "basis" was changed to "conditions" for clarification.

Comment 79

TAGD, Northern Trinity GCD, and Middle Trinity GCD requested TCEQ revise the last paragraph, §230.11(c), related to Certification, to add the underlined language:

"(c) Certification. Based on best professional judgement, current groundwater conditions, applicable groundwater conservation district regulations, and the information developed and presented in the form specified by §230.3(c) of this title, the licensed professional engineer or licensed professional geoscientist certifies by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) and accessible under the rules of the groundwater conservation district(s), if applicable, to supply the estimated demand of the proposed subdivision."

Response 79

See Response 25. No change was made in response to this comment.

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, Local Government Code, §212.0101(b) and §232.0032(b) require the commission to promulgate rules that establish the appropriate form and content of a certification to be attached to a plat application.

The adopted amendments implement the language set forth in Senate Bill 2440 from the 88th Texas Legislature.

§230.1. General.

(a) Purpose. This chapter establishes the form and content of a certification to be attached to a plat application under Texas Local Government Code, §212.0101 or §232.0032, which requires certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply. These rules do not replace:

(1) other state and federal requirements applicable to public drinking water supply systems;

(2) the authority of counties within designated priority groundwater management areas under Texas Water Code, §35.019; or

(3) the authority of groundwater conservation districts under Texas Water Code, Chapter 36.

(b) Transmittal of data. Copies of the information, estimates, data, calculations, determinations, statements, and certification required by §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data), §230.9 of this title (relating to Determination of Groundwater Quality), §230.10 of this title (relating to Determination of Groundwater Availability), and §230.11 of this title (relating to Groundwater Availability and Usability Statements and Certification) must be provided with the certification to:

(1) the executive administrator of the Texas Water Development Board, and

(2) the applicable groundwater conservation district or districts.

(c) Plat Attesting Form. The Plat Attesting Form (TCEQ-20983) must be submitted with the certification, attesting that copies of the information, estimates, data, calculations, determinations, statements, and the certification have been provided to:

(1) the executive administrator of the Texas Water Development Board, and

(2) the applicable groundwater conservation district or districts.

§230.3. Certification of Groundwater Availability for Platting.

(a) Preparation of the certification. The certification required by this chapter must be prepared by a Texas licensed professional engineer or a Texas licensed professional geoscientist.

(b) Certification Requirements. The certification must meet the requirements of §§230.4 - 230.11 (relating to Certification of Groundwater Availability for Platting, Administrative Information, Proposed Subdivision Information, Projected Water Demand Estimate, General Groundwater Resource Information, Obtaining Site-Specific Groundwater Data, Determination of Groundwater Quality, Determination of Groundwater Availability, and Groundwater Availability and Usability Statements and Certification) of this chapter.

(c) Submission of information. The certification of adequacy of groundwater under the subdivision required by this chapter must be submitted to the following:

(1) the municipal or county authority,

(2) the executive administrator of the Texas Water Development Board, and

(3) the applicable groundwater conservation district or districts.

(d) Form required. The certification required by this chapter must be submitted on the Certification of Groundwater Availability for Platting Form (TCEQ-20982).

§230.4. Administrative Information.

At a minimum, the following general administrative information must be provided for a proposed subdivision for which groundwater under the land will be the source of water supply:

(1) the name of the proposed subdivision;

(2) any previous or other name(s) which identifies the tract of land;

(3) the name, address, phone number, email address, and facsimile number of the property owner or owners;

(4) the name, address, phone number, email address, and facsimile number of the person submitting the plat application;

(5) the name, address, phone number, email address, facsimile number, and registration number of the licensed professional engineer or the licensed professional geoscientist preparing the certification as required in this chapter;

(6) the location and property description of the proposed subdivision;

(7) the tax assessor parcel number(s) by book, map, and parcel; and

(8) the name, address phone number, email address, and facsimile number of the applicable groundwater conservation district or districts.

§230.5. Proposed Subdivision Information.

At a minimum, the following information pertaining to the proposed subdivision must be provided:

(1) the purpose of the proposed subdivision, for example, single family residential, multi-family residential, non-residential, commercial, or industrial;

(2) the size of the proposed subdivision in acres;

(3) the number of proposed lots within the proposed subdivision;

(4) the average size (in acres) of the proposed lots in the proposed subdivision;

(5) the anticipated method of water distribution to the proposed lots in the proposed subdivision including, but not limited to:

(A) an expansion of an existing public water supply system to serve the proposed subdivision (if groundwater under the subdivision is to be the source of water supply);

(B) a new public water supply system for the proposed subdivision;

(C) individual water wells to serve individual lots; or

(D) a combination of methods;

(6) if the anticipated method of water distribution for the proposed subdivision is from an expansion of an existing public water supply system or from a proposed public water supply system, evidence required under §290.39(c)(1) of this title (relating to Rules and Regulations for Public Water Systems) must be provided demonstrating that written application for service was made to the existing water providers within a 1/2-mile radius of the subdivision; and

(7) any additional information required by the municipal or county authority as part of the plat application.

§230.8. Obtaining Site-Specific Groundwater Data.

(a) Applicability of section. This section is applicable only if the proposed method of water distribution for the proposed subdivision is individual water wells on individual lots. If expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision, site-specific groundwater data must be developed under the requirements of Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) and the information developed in meeting these requirements must be attached to the Certification of Groundwater Availability for Platting Form (TCEQ-20982).

(b) Location of existing wells. All known existing, abandoned, and inoperative wells within the proposed subdivision must be identified, located, and mapped by on-site surveys. Existing well locations must be illustrated on the plat required by the municipal or county authority.

(c) Aquifer testing. Utilizing the information considered under §230.7(b) of this title (relating to General Groundwater Resource Information), an aquifer test must be conducted to characterize the aquifer(s) underlying the proposed subdivision. The aquifer test must provide sufficient information to allow evaluation of each aquifer that is being considered as a source of residential and non-residential water supply for the proposed subdivision. Appropriate aquifer testing must be based on typical well completions. An aquifer test conducted under this section utilizing established methods must be reported and must include, but not be limited to, the following items.

(1) Test well and observation well(s). At a minimum, one test well (i.e., pumping well) and one observation well, must be required to conduct an adequate aquifer test under this section. Additional observation wells must be used for the aquifer test if it is practical or necessary to confirm the results of the test. The observation well(s) must be completed in the same aquifer or aquifer production zone as the test well. The locations of the test and observation well(s) must be shown on the plat required by the municipal or county authority.

(2) Location of wells. The test and observation well(s) must be placed within the proposed subdivision and must be located by latitude and longitude. The observation well(s) must be located at a radial distance such that the time-drawdown data collected during the planned pumping period fall on a type curve of unique curvature. In general, observation wells in unconfined aquifers should be placed no farther than 300 feet from the test well, and no farther than 700 feet in thick, confined aquifers. The observation well should also be placed no closer to the test well than two times the thickness of the aquifer's production zone. The optimal location for the observation well(s) can be determined by best professional judgement after completion and evaluation of the test well as provided in paragraph (4) of this subsection.

(3) Lithologic and geophysical logs. The test and observation wells must be lithologically and geophysically logged to map and characterize the geologic formation(s) and the aquifer(s) in which the aquifer test(s) is to be performed.

(A) A lithologic log must be prepared showing the depth of the strata, their thickness and lithology (including size, range, and shape of constituent particles as well as smoothness), occurrence of water bearing strata, and any other special notes that are relevant to the drilling process and to the understanding of subsurface conditions.

(B) Geophysical logs must be prepared which provide qualitative information on aquifer characteristics and groundwater quality. At a minimum, the geophysical logs must include an electrical log with shallow and deep-investigative curves (e.g., 16-inch short normal/64-inch long normal resistivity curves or induction log) with a spontaneous potential curve.

(C) The municipal or county authority may, on a case-by-case basis, waive the requirement of geophysical logs as required under this section if it can be adequately demonstrated that the logs are not necessary to characterize the aquifer(s) for testing purposes.

(4) Well development and performance. The test and observation well(s) must be developed prior to conducting the aquifer test to repair damage done to the aquifer(s) during the drilling operation. Development must ensure that the hydraulic properties of the aquifer(s) are restored as much as practical to their natural state.

(A) Well development procedures applied to the well(s) may vary depending on the drilling method used and the extent of the damage done to the aquifer(s).

(B) During well development, the test well must be pumped for several hours to determine the specific capacity of the well, the maximum anticipated drawdown, the volume of water produced at certain pump speeds and drawdown, and to determine if the observation well(s) are suitably located to provide useful data.

(C) Water pumped out of the well during well development must not be allowed to influence initial well performance results.

(D) Aquifer testing required by this section must be performed before any acidization or other flow-capacity enhancement procedures are applied to the test well.

(5) Protection of groundwater. All reasonably necessary precautions must be taken during construction of test and observation wells to ensure that surface contaminants do not reach the subsurface environment and that undesirable groundwater (water that is injurious to human health and the environment or water that can cause pollution to land or other waters) if encountered, is sealed off and confined to the zone(s) of origin.

(6) Duration of aquifer test and recovery. The duration of the aquifer test depends entirely on local and geologic conditions. However, the test must be of sufficient duration to observe a straight-line trend on a plot of water level versus the logarithm of time pumped. Water pumped during the test must not be allowed to influence the test results. Aquifer testing must not commence until water levels (after well development) have completely recovered to their pre-development level or at least to 90% of that level.

(A) At a minimum, a 24-hour uniform rate aquifer test must be conducted. Testing must continue long enough to observe a straight-line trend on a plot of water level versus the logarithm of time pumped. If necessary, the duration of the test should be extended beyond the 24-hour minimum limit until the straight-line trend is observed.

(i) If it is impractical to continue the test until a straight-line trend of water level versus the logarithm of time pumped is observed within the 24-hour limit, the test must continue at least until a consistent pumping-level trend is observed. In such instances, failure to observe the straight-line trend must be recorded.

(ii) If the pumping rates remain constant for a period of at least four hours and a straight-line trend is observed on a plot of water level versus the logarithm of time pumped before the 24-hour limit has been reached, the pumping portion of the test may be terminated.

(iii) The frequency of water level measurements during the aquifer test must be such that adequate definition of the time-drawdown curve is made available. As much information as possible must be obtained in the first ten minutes of testing (i.e., pumping).

(B) Water-level recovery data must be obtained to verify the accuracy of the data obtained during the pumping portion of the test. Recovery measurements must be initiated immediately at the conclusion of the pumping portion of the aquifer test and must be recorded with the same frequency as those taken during the pumping portion of the aquifer test. Time-recovery measurements must continue until the water levels have recovered to pre-pumping levels or at least to 90% of that level. If such recovery is not possible, time-recovery measurements should continue until a consistent trend of recovery is observed.

(7) Use of existing wells and aquifer test data.

(A) An existing well may be utilized as an observation well under this section if sufficient information is available for that well to demonstrate that it meets the requirements of this section.

(B) The municipal or county authority may accept the results of a previous aquifer test in lieu of a new test if:

(i) the previous test was performed on a well located within a 1/4-mile radius of the subdivision;

(ii) the previous test fully meets all the requirements of this section;

(iii) the previous test was conducted on an aquifer which is being considered as a source of water supply for the proposed subdivision; and

(iv) aquifer conditions (e.g., water levels, gradients, etc.) during the previous test were approximately the same as they are presently.

(8) Need for additional aquifer testing and observation wells. Best professional judgement must be used to determine if additional observation wells or aquifer tests are needed to adequately demonstrate groundwater availability. The Theis and Cooper-Jacob nonequilibrium equations, and acceptable modifications thereof, are based on well documented assumptions. To determine if additional information is needed, best professional judgement must be used to consider these assumptions, the site-specific information derived from the aquifer test required by this section, the size of the proposed subdivision, and the proposed method of water delivery.

(d) Submission of information. The information, data, and calculations required by this section must be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

§230.10. Determination of Groundwater Availability.

(a) Time frame for determination of groundwater availability. At a minimum, both a short- and long-term determination of groundwater availability must be made, each considering the estimated total water demand at full build out of the proposed subdivision. Groundwater availability must be determined for ten years and 30 years and for any other time frame(s) required by the municipal or county authority.

(b) Other considerations in groundwater availability determination. Groundwater availability determinations must take into account the anticipated method of water delivery as identified under §230.5 of this title (relating to Proposed Subdivision Information) and will be compared to annual demand estimates at full build out as determined under §230.6 of this title (relating to Projected Water Demand Estimate).

(c) Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must be determined utilizing the information considered under §230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required under one of the following: (1) §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or (2) Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) for new and existing public water systems. The parameters must be reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982). The time-drawdown and time-recovery data obtained during the aquifer test must be used to determine aquifer parameters utilizing the nonequilibrium equations developed by Theis or Cooper-Jacob, or acceptable modifications thereof. The following aquifer parameters must be determined:

(1) rate of yield and drawdown;

(2) specific capacity;

(3) efficiency of the pumped (test) well;

(4) transmissivity;

(5) coefficient of storage;

(6) hydraulic conductivity;

(7) recharge or barrier boundaries, if any are present; and

(8) thickness of the aquifer(s).

(d) Determination of groundwater availability. Using the information and data identified and determined in subsections (b) and (c) of this section, the following calculations must be made.

(1) Time-drawdown. The amount of drawdown at the pumped well(s) and at the boundaries of the proposed subdivision must be determined for the time frames identified under subsection (a) of this section.

(2) Distance-drawdown. The distance(s) from the pumped well(s) to the outer edges of the cone(s)-of-depression must be determined for the time frames identified under subsection (a) of this section.

(3) Well interference. For multiple wells in a proposed subdivision, calculations must be made to:

(A) determine how pumpage from multiple wells will affect drawdown in individual wells for the time frames identified under subsection (a) of this section; and

(B) determine a recommended minimum spacing limit between individual wells and well yields from the wells that will allow for the continued use of the wells for the time frames identified under subsection (a) of this section.

(e) Determination of groundwater quality. The water quality analysis required under §230.9 of this title (relating to Determination of Groundwater Quality) must be compared to primary and secondary public drinking water standards and the findings documented on or attached to the Certification of Groundwater Availability Form (TCEQ-20982).

(f) Submission of information. The information, data, and calculations required by this section must be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

§230.11. Groundwater Availability and Usability Statements and Certification.

(a) Groundwater availability and usability statements. Based on the information developed under §230.10 of this title (relating to Determination of Groundwater Availability), the following information must be provided on or attached to the Certification of Groundwater Availability Form (TCEQ-20982):

(1) the estimated drawdown of the aquifer at the pumped well(s) over a ten-year period and over a 30-year period;

(2) the estimated drawdown of the aquifer at the subdivision boundary over a ten-year period and over a 30-year period;

(3) the estimated distance from the pumped well(s) to the outer edges of the cone(s)-of-depression over a ten-year period and over a 30-year period;

(4) the recommended minimum spacing limit between wells and the recommended well yield; and

(5) the sufficiency of available groundwater quality to meet the intended use of the platted subdivision.

(b) Groundwater availability determination conditions. The assumptions and uncertainties that are inherent in the determination of groundwater availability must be clearly identified. These conditions must be identified to adequately define the basis for the availability and usability statements. These conditions may include, but are not limited to, uncontrollable and unknown factors such as:

(1) future pumpage from the aquifer or from interconnected aquifers from area wells outside of the subdivision or any other factor that cannot be predicted that will affect the storage of water in the aquifer;

(2) long-term impacts to the aquifer based on climatic variations; and

(3) future impacts to usable groundwater due to unforeseen or unpredictable contamination.

(c) Certification. Based on best professional judgement, current groundwater conditions, and the information developed and presented on or attached to the Certification of Groundwater Availability Form (TCEQ-20982), the licensed professional engineer or licensed professional geoscientist must certify by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) to supply the estimated demand of the proposed subdivision.

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

Filed with the Office of the Secretary of State on November 21, 2024.

TRD-202405714
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: May 24, 2024
For further information, please call: (512) 239-2678

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CHAPTER 336. RADIOACTIVE SUBSTANCE RULES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 TAC §§336.2, 336.102, 336.105, 336.208, 336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357, 336.625, 336.701, and 336.1215 without changes to the proposed text as published in the June 28, 2024, issue of the *Texas Register* (49 TexReg 4710) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The commission adopts changes to Chapter 336, Subchapter D to correct a reference to Department of Transportation rules, remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources, and correct an error in an equation for the "sum of fractions" methodology to ensure compatibility with federal regulations promulgated by the Nuclear Regulatory Commission (NRC) which is necessary to preserve the status of Texas as an Agreement State under Title 10 Code of Federal Regulations (CFR) Part 150 and under the "Articles of Agreement between the United States Atomic Energy Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended." Rules which are designated by NRC as compatibility items must be adopted by an Agreement State within three years of the effective date of the NRC rules, in most cases.

The commission adopts changes to Subchapters A, D, G, and H to change the spelling of "byproduct" to "by-product" to be consistent with Texas Health and Safety Code (THSC), Chapter 401. The commission adopts changes to Subchapter H to correct the reference to a rule to correct errors. The commission adopts changes to Subchapter B to add a definition of "closure" specific to Subchapter B and add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission adopts changes to Subchapter B to remove instructions about the annual fee for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services during the one-year period prior to June 17, 2007, to remove obsolete text. The commission adopts changes to Subchapter C and M to modify the training requirements for the Radiation Safety Officer (RSO) to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

Section by Section Discussion

The commission adopts administrative changes throughout this rulemaking to be consistent with *Texas Register* requirements and agency rules and guidelines.

§336.2, *Definitions*

The commission adopts this rulemaking to amend §§336.2(20), 336.2(20)(B), 336.2(89)(B)(iv), 336.2(99), 336.2(126), and 336.2(170) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.102, *Definitions*

The commission adopts this rulemaking to add a definition of closure specific to Subchapter B for clarity since licensing fees are different when a license is in closure. The adopted definition mirrors the definition of closure found in 30 Texas Administrative Code (TAC) §37.9035. The commission rulemaking adoption will increase the numbering of the subsequent definitions by one.

§336.105, *Schedule of Fees for Other Licenses*

The commission adopts this rulemaking to remove 30 TAC §336.105(g) to remove obsolete text regarding instructions for when a licensee remitted a biennial licensing fee to the Texas Department of State Health Services prior to June 17, 2007, and amend §336.105(i) and §336.105(j) to add a reference to THSC, §401.271 regarding fees for commercial radioactive waste disposal for clarity. The commission rulemaking adoption will adjust the numbering of the remaining rules accordingly.

§336.208, *Radiation Safety Officer*

The commission adopts the rulemaking to amend §336.208(a)(3) to modify the training requirements for the RSO from requiring at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to requiring additional training as determined by the Executive Director. This modification provides the commission flexibility in determining adequate training for the RSO at different licensed facilities.

§336.329, *Exemptions to Labeling Requirements*

The commission adopts the rulemaking to amend the reference to Department of Transportation rules in 30 TAC §336.329(4). This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.331, *Transfer of Radioactive Material*

The commission adopts this rulemaking to amend §§336.331(a), 336.331(b), 336.331(c), 336.331(d)(5), 336.331(f), and 336.331(i) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.332, *Preparation of Radioactive Material for Transport*

The commission adopts this rulemaking to amend §336.332(a) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.336, *Tests*

The commission adopts this rulemaking to amend §336.336(a)(1) and §336.336(a)(4) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.341, *General Recordkeeping Requirements for Licensees*

The commission adopts this rulemaking to amend §336.341(e) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.351, *Reports of Transactions Involving Nationally Tracked Sources*.

The commission adopts this rulemaking to remove 30 TAC §336.351(a)(8) to remove an obsolete January 31, 2009 deadline for licensees to report their initial inventory of Category 1 or Category 2 nationally tracked sources. This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.357, *Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material*

The commission adopts this rulemaking to amend the figure in 30 TAC §336.357(z) by correcting an error in the equation for the "sum of fractions" methodology. This rule amendment is adopted to ensure compatibility with federal regulations promulgated by the NRC.

§336.625, *Expiration and Termination of Licenses*

The commission adopts this rulemaking to amend §§336.625(c), 336.625(c)(1), and 336.625(i)(1) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401.

§336.701, *Scope and General Provisions*

The commission adopts this rulemaking to amend §336.701(b)(2) to change the spelling of "byproduct" to "by-product" to be consistent with THSC, Chapter 401 and change the reference to §336.2(13)(B) to §336.2(20)(B) to correct an error.

§336.1215, *Issuance of Licenses*

The commission adopts this rulemaking to amend §336.1215(a)(5) by referring to 30 TAC §336.208 for the training requirements for a RSO and removing the additional requirements in §336.1215(a)(5)(A) and (B) since these requirements are also stated in 30 TAC §336.208. The commission admends §336.1215(a)(5)(C) to remove the training requirements that the RSO have at least four weeks of specialized additional training from a course provider that has been evaluated and approved by the agency to provide the commission flexibility in determining adequate training for the RSO at different licensed facilities.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of the Texas Government Code (TGC), §2001.0225. The commission determined that the action is not subject to TGC, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the adopted rule is not to protect the environment or to reduce risks to human health from environmental exposure. The intent of the adopted amendments is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. Additionally, some of these adopted amendments are required for TCEQ to maintain compatibility with the NRC for these licensing programs. Therefore, the rulemaking adoption is not a major environmental rule.

Furthermore, even if the rulemaking adoption does meet the definition of a "Major environmental rule", the adopted rules do not meet any of the four applicability requirements listed in TGC, §2001.0225. Section 2001.0225 applies to a "Major environmental rule", the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking adoption does not meet any of the four applicability requirements listed in TGC, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is adopting this rulemaking, in part, to ensure compatibility with federal regulations promulgated by the NRC. The State of Texas is an "Agreement State" authorized by the NRC to administer a radiation control program under the Atomic Energy Act of 1952, as amended (Atomic Energy Act).

Second, the rulemaking does not adopt requirements that are more stringent than existing state laws. THSC, Chapter 401, authorizes the commission to regulate the licensing and disposal of radioactive substances, source material recovery, and commercial radioactive substances storage and processing. The rulemaking adoption seeks to make corrections and provide clarity and flexibility consistent with state law.

Third, the rulemaking adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to main-

tain a compatible state program for protection against hazards of radiation. The rulemaking adoption does not exceed the NRC requirements nor exceed the requirements for retaining status as an "Agreement State."

Fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, sections of THSC, Chapter 401, authorize this rulemaking, which are cited in the Statutory Authority section of this preamble.

The commission invited public comments regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed analysis of whether the adopted rules constitute a taking under TGC, Chapter 2007. The specific purpose of the adopted rules is to remove obsolete text, correct errors, add clarity, and provide flexibility in determining adequate training for the radiation safety officer at different licensed facilities. The adopted rules will substantially advance this stated purpose by correcting references to rules, correcting misspellings, adding a definition of "closure," removing obsolete language, correcting errors to ensure compatibility with federal regulations, and modifying training requirements.

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted 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 adopted rules will not burden private real property because they remove obsolete text, correct errors, add clarity, and provide flexibility in training requirements at licensed facilities.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

The commission offered a public hearing on July 29, 2024. The comment period closed on July 30, 2024. The commission received no comments.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §336.2

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approve all general policies of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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

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Charmaine Backens
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SUBCHAPTER B. RADIOACTIVE SUBSTANCE FEES

30 TAC §336.102, §336.105

Statutory Authority

The rule changes are adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for

the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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SUBCHAPTER C. GENERAL LICENSING REQUIREMENTS

30 TAC §336.208

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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SUBCHAPTER D. STANDARDS FOR PROTECTION AGAINST RADIATION

30 TAC §§336.329, 336.331, 336.332, 336.336, 336.341, 336.351, 336.357

Statutory Authority

The rule changes are adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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SUBCHAPTER G. DECOMMISSIONING STANDARDS

30 TAC §336.625

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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SUBCHAPTER H. LICENSING REQUIREMENTS FOR NEAR-SURFACE LAND DISPOSAL OF LOW-LEVEL RADIOACTIVE WASTE

30 TAC §336.701

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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SUBCHAPTER M. LICENSING OF RADIOACTIVE SUBSTANCES PROCESSING AND STORAGE FACILITIES

30 TAC §336.1215

Statutory Authority

The rule change is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.105, which

authorizes the commission to establish and approved all general policy of the commission by rule; Texas Health and Safety Code (THSC), §401.011, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing and storage of low-level radioactive waste or naturally occurring radioactive material waste, the recovery and processing of source material, and the processing of by-product material; THSC, §401.051, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; THSC, §401.103, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; THSC, §401.104, which requires the commission to provide rules for licensing for the disposal of radioactive substances; THSC, §401.202, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; THSC, §401.262, which authorizes the commission to regulate by-product storage and processing facilities; THSC, §401.301, which authorizes the commission to set fees by rule; and THSC, §401.412, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendments implement THSC, Chapter 401, and are adopted to meet compatibility standards set by the United States Nuclear Regulatory Commission.

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