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IN ADDITION

Texas State Affordable Housing Corporation

Office of Consumer Credit Commissioner

Credit Union Department

Texas Education Agency

Texas Commission on Environmental Quality

General Land Office

Texas Health and Human Services Commission

Texas Department of Insurance

North Central Texas Council of Governments

Public Utility Commission of Texas

Texas Workforce Commission

Texas Workforce Investment Council

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER H. LICENSE SUSPENSION

1 TAC §55.205

The Office of the Attorney General (OAG) Child Support Division proposes an amendment to 1 TAC § 55.205(d) regarding the method of service of notice of an administrative petition to suspend license pursuant to Texas Family Code § 232.006.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

This rule proposal amends § 55.205(d) regarding notice of an administrative petition to suspend license. The first method of notice was "as in civil cases generally." Tex. Fam. Code § 232.006(b)(2). The Legislature added subsection (b)(1) to Texas Family Code § 232.006 (S.B. 228), regarding a second method of service in license suspension actions. The second method authorized that if a party has been ordered under Chapter 105 to provide their current address, notice of license suspension actions may be served by first class mailing. This proposed amendment will align the Texas Administrative Code with the existing Texas Family Code provision, which authorizes service by mail in qualifying cases.

SECTION SUMMARY

Section 55.205(d), titled "Initiating a Proceeding," would be amended to replace the current reference to Texas Rule of Civil Procedure 106 with a new reference to Texas Family Code § 232.006 for obtaining service of the notice on the obligor in an action to suspend a license.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support (IV-D Director), has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

PUBLIC BENEFIT AND COST NOTE

Ms. Thornton has also determined that for each year of the first five years the proposed amendment is in effect, the public will benefit from clarification of the process, and unity in both the Texas Family Code and Texas Administrative Code, for notice of an administrative petition to suspend a license. In addition, for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Ms. Thornton has determined that the proposed amendment does not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Texas Government Code § 2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Ms. Thornton has determined there will not be an effect on small businesses, micro-businesses, and rural communities required to comply with the amendment as proposed. Therefore, no regulatory flexibility analysis is required under Texas Government Code § 2006.002

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the proposed amendment, and the proposed amendment does not restrict, limit, or impose a burden on an owner's rights to his or her private real property which would otherwise exist in the absence of government action. As a result, the proposed amendment does not constitute a taking or require a takings impact assessment under Texas Government Code § 2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code § 2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the proposed amendment would be in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create new regulations;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect this state's economy.

PUBLIC COMMENT

The OAG's Child Support Division invites comments on the proposed amended rule from any interested persons, including any member of the public. Written comments on this proposed amendment should be submitted to Joel Rogers, Associate Deputy Attorney General for Child Support Legal Services, Child Support Division, Office of the Attorney General P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017 or CSD-Tex-Admin-Code@oag.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register.* Comments must be received within 30 days after the publication of this proposed amendment to be considered.

STATUTORY AUTHORITY

The OAG proposes an amendment to 1 TAC §55.205(d) under the authority of Texas Family Code §§ 231.001, 231.003, 232.016. Section 231.001 designates the OAG as the state's Title IV-D agency. Section 231.003 authorizes the Title IV-D agency by rule to promulgate forms and procedures for the implementation of Title IV-D services. Section 232.016 authorizes the Title IV-D agency by rule to promulgate forms and procedures for the implementation of Chapter 232, Suspension of License.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§55.205. Initiating a Proceeding.

(a) Filing the Petition. The petitioner initiates a proceeding by filing the Petition to Suspend License packet with: Coordinator, Office of the Attorney General, Child Support Division, 5500 E. Oltorf, Austin, Texas 78741 (hand delivery); P.O. Box 12017, Mail Code 039-3, Austin, Texas 78711-2017 (Postal Service delivery).

(b) Petition to Suspend License Packet. The packet is the Notice of Filing Petition to Suspend License, with all attachments, including the Petition to Suspend License, Request for Hearing, all relevant court orders and payment records.

(c) Issuance of Notice of Filing of Petition to Suspend License. After determining that the packet is complete, the coordinator will assign a docket number to the petition, seal the notice, and file-stamp the notice and petition.

(d) Service. The coordinator is responsible for obtaining service of the notice on the obligor in accordance with Texas Family Code § 232.006. [~~as in civil cases generally. See Texas Rule of Civil Procedure 106.~~]

(e) Evidence of Service. Upon obtaining service on the obligor, the coordinator must file evidence that service has been obtained. A copy of the return of service, a copy of the return receipt on certified mail, or an affidavit of service issued by the coordinator is evidence that service has been obtained.

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

Filed with the Office of the Secretary of State on June 19, 2023.

TRD-202302198
Austin Kinghorn
General Counsel
Office of the Attorney General
Earliest possible date of adoption: July 30, 2023
For further information, please call: (800) 252-8014

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES
SUBCHAPTER R. ZERO AGRICULTURAL PEST AND DISEASE GRANT PROGRAM

4 TAC §§1.1200 - 1.1206

The Texas Department of Agriculture (Department) proposes new Title 4, Part 1, Chapter 1, Subchapter R, §§1.1200 - 1.1206 to the Texas Administrative Code, providing rules for the establishment, implementation, and administration of the Zero Agricultural Pest and Disease Grant Program (Program), including eligibility, use of funds, application, and reporting requirements.

Section 1.1200 outlines the purpose of the Program.

Section 1.1201 provides the authority for and outlines the method of administration of the Program.

Section 1.1202 delineates the applicant eligibility requirements to participate in the Program.

Section 1.1203 describes allowable activities for use of funds in the Program.

Sections 1.1204, 1.1205, and 1.1206 identify requirements related to Program administration, including the application process and requirements, and reporting requirements.

The Department has determined that the proposal will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

Karen Reichek, Administrator for Trade and Business Development, has determined for each year of the first five years the proposed rules are in effect, there will be no fiscal impact to state government as a result of implementing the proposed rules. For each year of the first five years the proposed rules are in effect, Ms. Reichek does not expect any costs to local governments.

Ms. Reichek has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of the proposed rules will be to provide an effective and efficient means for the Department to carry out plant pest and disease detection and implement a plant pest and disease detection and surveillance program to protect Texas agriculture. There are no anticipated economic costs for persons required to comply with the proposed rules. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the implementation of the proposed rules, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002 is not required.

Ms. Reichek has also provided the following government growth impact statement, as required by Texas Government Code, §2001.0221. For the first five years the proposed rules are in effect:

1. the proposed rules do not create a government program;

2. implementation of the proposed rules does not require the creation or the elimination of employee positions;

3. implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the Department;

4. there will be no increase or decrease in fees paid to the Department;

5. the proposed rules will create new regulations;

6. there will be no expansion, limitation, or repeal of existing regulations;

7. there will be no increase or decrease of the number of individuals subject to the rules' applicability; and

8. the proposed rules will positively affect this state's economy by mitigating the impact of pests and diseases that hinder the productivity of agriculture and the related economy.

Written comments on the proposal may be submitted to Ms. Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture at the following address: Karen Reichek, Administrator for Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Karen.Reichek@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new rules are proposed pursuant to §12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules as necessary for the administration of its powers and duties under the Code and to implement Chapter 71, subchapter E of the Code, which directs the Department to establish a plant pest and disease detection and surveillance program.

The code affected by the proposal is Texas Agriculture Code, Chapters 12 and 71.

§1.1200. Statement of Purpose.

The Zero Agricultural Pest and Disease (ZAPD) Grant Program is designed to provide grants to eligible institutions of higher education to conduct plant pest and disease detection and surveillance to detect plant pests and diseases newly introduced to this state or to a certain area of the state before a pest or disease becomes established or an infestation of a pest or outbreak of a disease becomes too large and costly to eradicate or control.

§1.1201. Administration.

(a) The department shall administer the ZAPD Grant Program pursuant to Texas Agriculture Code, Chapter 71, Subchapter E, subject to the availability of funds.

(b) The department shall approve a standard grant application for each grant cycle. The request for grant applications, standard application form, and related guidance materials for the ZAPD grant shall state, as appropriate, the purpose of the grant program, eligibility criteria, information identified by department as required for funding consideration, selection criteria, due date for submission of applications, and estimated award date.

(c) The department, in consultation with the State Seed and Plant Board and other interested parties, as defined in Texas Agriculture Code, §71.201(3), shall review submitted applications according to the published selection criteria in the request for grant application and make funding recommendations to the Commissioner.

§1.1202. Eligibility.

An institution of higher education, as defined in Texas Education Code, Section 61.003, that agrees to conduct plant pest and disease detection and surveillance, is eligible to apply for a grant under this subchapter if the department determines that:

(1) the institution of higher education is in a region of this state that has a high risk of being affected by one or more plant pests or diseases based on:

(A) the region's conduciveness to agricultural pest and disease establishment due to location, agricultural commodities produced, climate, crop diversity, or natural resources, or

(B) the department's determination that an agricultural pest or disease in the region is a matter of state or federal concern; and

(2) the proposed grant project will likely:

(A) prevent the introduction, establishment, or widespread dissemination of plant pests and diseases; and

(B) provide a comprehensive approach to complement federal and state plant pest and disease detection efforts.

§1.1203. Use of Grant Funds.

The expenditure of grant funds by a grant recipient shall be documented and the funds used only for activities directly related to the purpose of the ZAPD Grant Program.

§1.1204. Filing Requirements; Consideration of Project Requests; Grant Awards.

(a) Applications must be submitted in the manner specified in the request for grant applications and in accordance with this subchapter.

(b) Eligible applicants shall submit a project request in the format prescribed by the department in the request for grant applications issued for the ZAPD Grant Program. Project requests must describe the project activities to be carried out, propose budget expenditures, reflect an estimated timeline for completion of activities, and include any other information required by the department.

(c) Maximum grant amounts for project awards shall be published in the request for grant applications.

§1.1205. Late or Ineligible Applications.

(a) The department shall not consider applications submitted after the published due date unless the deadline has been revised for all applicants.

(b) The department will perform an administrative review to determine applicant eligibility and responsiveness to the request for grant applications.

(c) Applications submitted by ineligible applicants will not receive funding consideration.

(d) Applications that are not fully responsive to the request for grant applications will not be considered during the competitive review process.

(e) Determinations of late or ineligible applications are final and not subject to an appeal process.

§1.1206. Reporting Requirements.

Grant recipients shall submit required reports in accordance with department procedures, and as specified in the grant agreement entered into by the department and the grant recipient.

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

Filed with the Office of the Secretary of State on June 16, 2023.

TRD-202302195
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 30, 2023
For further information, please call: (512) 936-9360

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CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM
SUBCHAPTER K. MAINTENANCE PROGRAM

4 TAC §3.702, §3.705

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 3, Subchapter K, §3.702, concerning West Texas Maintenance Area and §3.705, concerning East Texas Maintenance Area.

The proposed amendment to §3.702 updates the status of the West Texas Maintenance Area from functionally eradicated to eradicated, as currently reflected in Title 4, Part 1, Chapter 20, §20.14, concerning Eradicated Areas.

The proposed amendment to §3.705 changes the status of the East Texas Maintenance Area from functionally eradicated to eradicated. The proposed amendment corresponds to proposed amendments to Title 4, Part 1, Chapter 20, §20.13, concerning Functionally Eradicated Areas and §20.14, concerning Eradicated Areas. Those proposed amendments change the status of two of the four Boll Weevil Eradication Zones in the East Texas Maintenance Area from functionally eradicated to eradicated, therefore, the entire maintenance area has been declared eradicated.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Phillip Wright, Administrator for Regulatory Affairs for Agriculture and Consumer Protection, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be an increase in the effectiveness of boll weevil and pink bollworm eradication efforts throughout the State as a result of updating the status of eradication zones.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Wright provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

(1) no government programs will be created or eliminated;

(2) no employee positions will be created or eliminated;

(3) there will be no increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) no new regulations will be created by the proposed amendments;

(6) there will be no expansion, limitation, or repeal of existing regulations;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the Texas economy.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposed amendments may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to morris.karam@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed pursuant to Section 74.120 of the Texas Agriculture Code (Code), which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74, and Section 74.204 of the Code, which allows the Department to adopt rules to implement and a boll weevil maintenance program under Chapter 74, Subchapter F of the Code.

The code affected by the proposed amendments is Texas Agriculture Code, Chapter 74.

§3.702. West Texas Maintenance Area.

(a) (No change.)

(b) In each of the eleven (11) existing contiguous eradication zones listed in subsection (a) of this section, the commissioner has determined that:

(1) the boll weevil has been [~~functionally~~] eradicated;

(2) - (4) (No change.)

(c) (No change.)

§3.705. East Texas Maintenance Area.

(a) (No change.)

(b) In each of the four (4) existing contiguous eradication zones listed in subsection (a) of this section, the Commissioner has determined that:

(1) the boll weevil has been [~~functionally~~] eradicated;

(2) - (4) (No change.)

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

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Skyler Shafer
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Texas Department of Agriculture
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CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS SUBCHAPTER L. PECAN WEEVIL QUARANTINE

4 TAC §19.121, §19.123

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code, Title 4, Part 1, Chapter 19, Quarantines and Noxious and Invasive Plants, Subchapter L, Pecan Weevil Quarantine, §19.121, Quarantined Areas, and §19.123, Restrictions.

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The proposed amendments to §19.121 add Lea and Otero Counties of New Mexico to the list of quarantined areas for pecan weevil to create consistency with New Mexico's interior pecan weevil quarantine rule (21.17.36.8, New Mexico Administrative Code (NMAC)), which designates Lea and Otero Counties as quarantined areas in addition to Eddy and Chaves Counties. The proposed amendments also add Pecos County to the list of pecan weevil free areas in Texas not subject to quarantine. The addition of Pecos County has been requested by the Texas Pecan Board after a program administered by the Pecos County Extension agent showed that weevil trap counts in 2021 and 2022 yielded zero catch of pecan weevil.

The proposed amendments to §19.123 change the methods to treat pecans for pecan weevil in order to align pecan treatment methods in Texas with those outlined in New Mexico's interior (21.17.36.11 NMAC) and exterior (21.17.28.11 NMAC) pecan weevil quarantine rules. Given the interstate nature of the pecan industry in Texas and New Mexico, the Department has determined that these methods will be more effective at countering the spread of pecan weevils and benefit pecan producers.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

1. the proposed amendments will not create or eliminate a government program;

2. implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

3. implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed amendments will not require an increase or decrease in fees paid to the Department;

5. the proposed amendments do not create a new regulation;

6. the proposed amendments will not expand, limit, or repeal an existing regulation;

7. the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

8. the proposed amendments will not affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Dr. Awinash Bhatkar, Coordinator for Biosecurity and Agriculture Resource Management, has determined that for the first five-year period the proposed amendments will be in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Dr. Bhatkar has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be increased consumer protection and protection of the pecan industry due to updates to these rules to reflect current Department efforts at enforcing quarantines. Dr. Bhatkar has also determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no costs to persons who are required to comply with the proposed amendments.

FISCAL IMPACT ON SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposed amendments may be submitted by mail to Liat DeVere, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: Liat.DeVere@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication in the *Texas Register.*

The amendments are proposed under §71.001 of the Texas Agriculture Code (Code), which provides the Department with the authority 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 outside the state; §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 §71.007 of the Code, which provides the Department with the authority to adopt rules as necessary for the protection of agricultural and horticultural interests.

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

§19.121. Quarantined Areas.
The quarantined areas are:

(1) Chaves, Eddy, Lea, and Otero [~~and Chaves~~] Counties, New Mexico, and all other states and districts of the United States except Arizona, California, and the remainder of New Mexico;

(2) all areas in the State of Texas except the counties of El Paso, Hudspeth, Culberson, Jeff Davis, [~~and~~] Presidio, and Pecos.

§19.123. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the free areas of Texas listed in this subchapter, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Movement of quarantined articles to a sheller or processing plant for treatment or further processing may be granted upon departmental review.

(c) Exceptions. All quarantined articles must be free of husk and accompanied by a state certificate certifying that the products were treated using one of the following methods [~~in the following manner~~]:

(1) storage in an approved cold storage chamber at or below zero degrees Fahrenheit for a period of seven consecutive days (168 hours) after the entire lot reaches zero degrees Fahrenheit as determined by facility standard operating procedures approved by the department;

(2) storage in an approved cold storage chamber at 12.2 degrees Fahrenheit for a period of 14 consecutive days (336 hours) after the entire lot reaches 12.2 degrees Fahrenheit as determined by facility standard operating procedures approved by the department;

(3) immersion in at least 140 degrees Fahrenheit water for a period of at least five minutes; or

(4) other treatment methods approved under a compliance agreement with the department.

[~~(1) dipped in water at a temperature of at least 140 degrees Fahrenheit for 30 seconds. It is not necessary to dip the parts of a tree that will be below ground level; or~~]

[~~(2) held at a temperature of 0 degrees Fahrenheit for a period of 168 consecutive hours or longer after the entire lot has reached the desired temperature; or~~]

[~~(3) alternate treatments may be approved upon departmental review.~~]

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

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Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
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CHAPTER 20. COTTON PEST CONTROL
SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.13, §20.14

The Texas Department of Agriculture (Department) proposes amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter B, §20.13, concerning Functionally Eradicated Areas and §20.14, concerning Eradicated Areas.

The proposed amendments are the result of a request from the Texas Boll Weevil Eradication Foundation (Foundation) to change the status of the Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) Boll Weevil Eradication Zones from functionally eradicated areas to eradicated areas.

This request followed a recommendation from the Foundation's Technical Advisory Committee (Committee) to the Foundation's Board of Directors (Board). The Committee based its recommendation on its evaluation of data concerning the presence of boll weevils in the two zones to determine if they qualified for a change in quarantine status. The Committee's evaluation was based on the criteria for an "eradicated area" contained in §20.1.

The Committee's data consisted of weevil counts in traps placed in cotton fields in the two zones. Each year, traps are placed around cotton fields in each zone at certain densities recommended by the Committee. In 2022, no weevils were captured in the two zones. No weevils have been captured in the UCB and STWG since 2010 and 2020, respectively. Also, Foundation staff conducted observations in cotton fields in the two zones and found no evidence of weevil damage or reproduction. In addition, the Foundation did not receive any reporting on boll weevil punctures or activity from consultants or Texas A&M AgriLife Extension Service personnel during these time periods.

The Committee presented its recommendation at the Board's meeting on November 9, 2022, which the Board accepted.

On May 10, 2023, the National Cotton Council, which describes itself as the central organization for the United States' cotton industry, sent the Department a letter supporting the Foundation's recommendation.

The proposed amendments to §20.13 remove the UCB and STWG Boll Weevil Eradication Zones from the list of functionally eradicated areas.

The proposed amendments to §20.14 replace the Northern Blacklands (NBL) Boll Weevil and Southern Blacklands (SBL) Eradication Zones with the East Texas Maintenance Area. With the addition of the UCB and STWG to the list of eradicated areas, all four eradication zones within the East Texas Maintenance Area, including the UCB and STWG Boll Weevil Eradication Zones, have eradicated status. Adding the East Texas Maintenance Area as opposed to adding more of its constituent eradications zones would simplify the rule's language. The proposed amendments also make editorial changes for clarity.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Phillip Wright, Administrator for Regulatory Affairs for Agriculture and Consumer Protection, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Wright has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be an increase in the effectiveness of boll weevil and pink bollworm eradication efforts throughout the State as a result of updating the status of eradication zones.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Wright has determined that the proposed amendments will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Wright provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Department has determined the following:

(1) no government programs will be created or eliminated;

(2) no employee positions will be created or eliminated;

(3) there will be no increase or decrease in future legislative appropriations to the Department;

(4) there will be no increase or decrease in fees paid to the Department;

(5) no new regulations will be created by the proposed amendments;

(6) there will be no expansion, limitation, or repeal of existing regulations;

(7) there will be no increase or decrease in the number of individuals subject to the rules; and

(8) there will be no positive or adverse effect on the Texas economy.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposed amendments may be submitted by mail to Mr. Morris Karam, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to morris.karam@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under Section 74.006 of the Texas Agriculture Code (Code), which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program and Section 74.004 of the Code, which provides the Department with the authority to establish regulated areas, dates, and appropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

The code affected by the proposed amendments is Texas Agriculture Code, Chapter 74.

§20.13. Functionally Eradicated Areas.

(a) (No change.)

[(b) The Upper Coastal Bend (UCB) Boll Weevil Eradication Zone and the South Texas Winter Garden (STWG) Boll Weevil Eradication Zone, as defined in §3.117 of this title (relating to Upper Coastal Bend Boll Weevil Eradication Zone) and the Texas Agriculture Code, §74.1021, have been declared as functionally eradicated by the commissioner.]

(b) [(c)] The department will recognize as functionally eradicated any areas outside of Texas that are declared functionally eradicated by that state's department of agriculture if that state's definition of a functionally eradicated area is equivalent to the definition of a functionally eradicated area in §20.1 of this chapter (relating to Definitions).

(c) [(d)] The department has determined that the definitions of a functionally eradicated area of New Mexico and Oklahoma departments of agriculture are equivalent to the definition of a functionally eradicated area in §20.1 of this chapter.

§20.14. Eradicated Areas.

(a) The commissioner may grant a request for [declaration of] an area in Texas to be declared [as] eradicated after a written recommendation is submitted to the department by the foundation, supported by scientific documentation acceptable to the department indicating that movement of regulated articles into the area presents a threat to the success of boll weevil eradication.

(b) The West Texas Maintenance Area, as provided in §3.702 of this title (relating to West Texas Maintenance Area), and the East Texas Maintenance Area, as provided in §3.705 of this title (relating to East Texas Maintenance Area) [the Northern Blacklands (NBL) Boll Weevil Eradication Zone, as provided in §3.116 of this title (relating to Northern Blacklands Boll Weevil Eradication Zone), and the Southern Blacklands (SBL) Boll Weevil Eradication Zone, as provided in §3.114 of this title (relating to Southern Blacklands Boll Weevil Eradication Zone),] have been declared [as] eradicated areas by the commissioner.

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

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

Filed with the Office of the Secretary of State on June 12, 2023.

TRD-202302135
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 30, 2023
For further information, please call: (512) 936-9360

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 86. RETAIL CREDITORS
SUBCHAPTER A. REGISTRATION OF RETAIL CREDITORS

7 TAC §86.102, §86.103

The Finance Commission of Texas (commission) proposes amendments to §86.102 (relating to Fees) and §86.103 (relating to Registration Term, Renewal, and Expiration) in 7 TAC Chapter 86, concerning Retail Creditors.

The rules in 7 TAC Chapter 86 govern registrations with the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapters 345 and 347. In general, the purposes of the proposed rule changes to 7 TAC Chapter 86 are to specify annual registration fees for registered creditors and manu-

factured home creditors, and to implement recent legislative amendments to Chapters 345 and 347.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

The Texas Legislature passed SB 1371 in the 2023 legislative session. SB 1371 modernizes, clarifies, and corrects provisions of the Texas Finance Code administered by the OCCC. In particular, SB 1371 amends provisions relating to registration fees. Currently, Texas Finance Code, §345.351 provides a $10 annual fee for a registered creditor registration under Chapter 345, and Texas Finance Code, §347.451 provides a $15 annual fee for a manufactured home creditor registration under Chapter 347. SB 1371 amends these sections to authorize the Finance Commission to set annual registration fees under Chapters 345 and 347. SB 1371 has been signed by the governor and will be effective September 1, 2023.

Proposed amendments to §86.102 would specify that the annual registration fee is $10 for a Chapter 345 registration and $15 for a Chapter 347 registration. These are the same amounts currently included in the Finance Code, so the rule amendments would not change the fees that registrants currently pay. The OCCC is responsible for the costs of its operations. Under Texas Finance Code, §16.002 and §16.003, the OCCC is a self-directed, semi-independent agency, and may set fees in amounts necessary for the purpose of carrying out its functions. The OCCC has reviewed its costs and determined that the $10 and $15 registration fee amounts are currently appropriate to cover the costs of carrying out the OCCC's responsibilities and functions under Texas Finance Code, Chapters 345 and 347. Other proposed amendments throughout §86.102(b) would ensure consistent use of the term "annual fee."

Proposed amendments to §86.103 would include updated cross-references to §86.102, to ensure that a reader can easily locate the fee provisions in §86.102.

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

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by registered creditors and will ensure that the OCCC can effectively administer and enforce Texas Finance Code, Chapters 345 and 347.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

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

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §86.102 by specifying registration fee amounts. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

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

The rule amendments are proposed under Texas Finance Code, §345.351 and §347.451 (as amended by SB 1371 (2023)), which authorize the commission to set fees for registrations under Texas Finance Code, Chapters 345 and 347. The rule amendments are also proposed under Texas Finance Code, §14.107 and §16.003, which authorize the Finance Commission and the OCCC to set fees in amounts necessary to carry out the functions of the OCCC. In addition, Texas Finance Code, §11.304 authorizes the Finance Commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 345 and 347.

§86.102. Fees.

(a) Locations requiring registration. An annual registration fee is required for each location operated by a retail seller, creditor, holder or assignee.

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will be payable as follows:

(1) The annual fee is $10 for a registration under Texas Finance Code, Chapter 345.

(2) The annual fee is $15 for a registration under Texas Finance Code, Chapter 347.

(3) [~~(1)~~] A retail seller, creditor, holder, or assignee must pay an annual [~~a registration~~] fee for every chapter under which business is conducted.

(4) [~~(2)~~] The registration is not transferable between locations. A retail seller, creditor, holder, or assignee must obtain a registration for each new location.

(5) [~~(3)~~] No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the per-

sonnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Late filing fee. As provided by Texas Finance Code, §349.302(b), a person must pay a $250 late filing fee for each registered location if the person:

(1) obtains a new registration after the person has begun engaging in business under Texas Finance Code, Chapter 345 or 347; or

(2) obtains a renewal more than 30 days after expiration.

(d) Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal.

(e) Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of $10 per certificate mailed.

§86.103. Registration Term, Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until November 30. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from December 1 of a calendar year to November 30 of the next calendar year.

(b) Due date for annual fee. The annual fee described by §86.102(b) of this title (relating to Fees) is due by November 30 of each year.

(c) Expiration. If a registrant does not pay the annual fee, the registration will expire on November 30.

(d) Late renewal. A person may renew an expired registration by December 30 by paying the annual fee. In order to renew an expired registration after December 30, a person must pay any registration fee for a prior year and the late filing fee described by §86.102 of this title [~~(relating to Fees)~~].

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

Filed with the Office of the Secretary of State on June 16, 2023.

TRD-202302183
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Earliest possible date of adoption: July 30, 2023
For further information, please call: (512) 936-7660

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PART 7. STATE SECURITIES BOARD

CHAPTER 133. FORMS

7 TAC §133.8

The Texas State Securities Board proposes the repeal of §133.8, which adopts by reference a form concerning Consent to Service. The rule and Form 133.8 are being repealed because they are no longer needed due to the availability of a uniform form that serves this purpose. The uniform Form U-2, Uniform Consent to Service of Process, has long been recognized by the Board in §133.33 as accepted for filing with the Agency as an alternative to Form 133.8.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed repeal.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed repeal is in effect the public benefit expected as a result of adoption of the proposed repeal will that a form that is no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeal will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeal of the rule adopting the form is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally the proposed repeal does not create a new regulation; and it does not limit or expand an existing regulation. The proposal repeals an existing form that is no longer needed.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeal in the *Texas Register.* Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeal is proposed under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed repeal affects: none applicable.

§133.8. Consent to Service.

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

Filed with the Office of the Secretary of State on June 16, 2023.

TRD-202302178

Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: July 30, 2023
For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 5. CARBON DIOXIDE (CO2)

The Railroad Commission of Texas (the "Commission") proposes amendments to §5.102 (relating to Definitions) in Subchapter A; and in Subchapter B proposes amendments to §§5.201 and 5.203 - 5.207 (relating to Applicability and Compliance; Application Requirements; Notice of Permit Actions and Public Comment Period; Fees, Financial Responsibility, and Financial Assurance; Permit Standards; and Reporting and Record-Keeping, respectively).

The Commission proposes the amendments to ensure that the rules are as stringent as the requirements of the U.S. Environmental Protection Agency ("EPA") to support the Commission's application to EPA for enforcement primacy for the federal Class VI Underground Injection Control (UIC) program.

EPA protects underground sources of drinking water (USDWs) by regulating the injection of fluids underground for storage or disposal. The Safe Drinking Water Act (SDWA) and the UIC program provide the primary regulatory framework. From the early 1980s until 2010, EPA regulated five classes of wells according to the type of fluid injected, the depth of injection, and the potential to endanger USDWs. Historically, most states have sought and been granted primacy over one or more classes of wells. For example, most states have primacy over Class II wells, in which fluids are injected for natural gas and oil production, hydrocarbons storage, and enhanced recovery of oil and gas.

In 2010, EPA promulgated rules creating a sixth well class (Class VI) specifically to regulate the injection of carbon dioxide ("CO_2") into deep subsurface rock formations. EPA established minimum technical criteria for permitting, site characterization, area of review and corrective action, financial responsibility, well construction, operation, mechanical integrity testing, monitoring, well-plugging, post-injection site care, and site closure requirements.

Under the SDWA, EPA may delegate its authority to implement and enforce the UIC program to states upon application. If EPA approves a state's application, the state assumes primary enforcement authority (i.e., primacy) over a class or classes of wells. Until a state receives primacy, EPA directly implements the UIC program through its regional offices.

The State of Texas has established a statutory framework for projects involving the capture, injection, sequestration or geologic storage of anthropogenic carbon dioxide. The statutes require the state to pursue primacy for the Class VI UIC program. After almost a decade of little interest, interest in carbon capture and geologic sequestration or storage has increased over the past several years prompting the Commission to resume efforts to gain primacy for the Class VI UIC program.

The Commission adopted initial regulations to implement the Class VI UIC program effective December 20, 2010, and amended those regulations in 2021 to reflect changes in the Texas statutes and to ensure that the state's program meets the minimum federal requirements for Class VI UIC wells. The State submitted to EPA its official application for primacy of the Class VI UIC program on December 19, 2022. Included in that application was a cross-walk comparison (i.e., a table comparing state and federal requirements). In March of 2023, EPA provided comments to the cross-walk comparison and recommended rule amendments in a few areas. These proposed amendments respond to EPA's recommendations.

Proposed amendments to §5.102

The Commission proposes to amend §5.102(2) to amend the definition of "Anthropogenic carbon dioxide (CO_2)" to reflect that the term includes all carbon dioxide that has been captured from, or would otherwise have been released into, the atmosphere. EPA expressed concern that the regulations referred only to "anthropogenic carbon dioxide." The proposed change would clarify that the regulations apply to carbon dioxide resulting from direct air capture technologies. A corresponding change is also proposed in the definition of "carbon dioxide (CO_2) stream" in §5.102(7).

The Commission proposes to amend the definition of "anthropogenic CO_2 injection well" in §5.102(3) and the definition of "geologic storage" in §5.102(28) to clarify that the regulations apply to the various phases of carbon dioxide (gaseous, liquid, or supercritical) for consistency with the federal Class VI UIC regulations.

The Commission proposes to add new paragraph (20) in §5.102 to define EPA as the United States Environmental Protection Agency.

The Commission proposes amendments to the definition of "good faith claim" in §5.102(30) to ensure the rule acknowledges that an operator and the owner of the pore space may use various mechanisms to grant the legal right to access and use the pore space.

The Commission proposes to amend §5.102 to add a new paragraph (47) to define "stratigraphic test well." The Commission also proposes to add new §5.102(51) to define "UIC" as Underground Injection Control.

Proposed amendments to §5.201

The Commission proposes to amend §5.201 to add a new subsection (h) regarding requirements for stratigraphic test wells.

Proposed Amendments to §5.203

The Commission proposes amendments in §5.203. First, the Commission proposes amendments to §5.203(a)(1)(B)(iii) to describe federal signatories to permit applications and required reports should a federal agency submit a Class VI UIC permit application consistent with 40 CFR §144.32(a)(3)(ii). EPA indicated that such an application is possible.

The Commission proposes to amend §5.203(a)(2)(C) to replace the word "relevant" with "required" consistent with the federal requirement at 40 CFR §144.31(e)(6) that an applicant list all permits or construction approvals received or applied for under the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the UIC program under SDWA, the National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act, the Prevention of

Significant Deterioration (PSD) program under the Clean Air Act, the Nonattainment program under the Clean Air Act, the National Emissions Standards for Hazardous Pollutants (NESHAP) preconstruction approval under the Clean Air Act, the ocean dumping permits under the Marine Protection Research and Sanctuaries Act, dredge and fill permits under section 404 of Clean Water Act, and other relevant environmental permits, including State permits.

The Commission proposes to amend §5.203(a)(2) to add new subparagraph (E) to require that the application for a Class VI UIC well indicate whether the geologic storage project is located on Indian lands consistent with the federal requirements. The Commission also proposes to amend §5.203(a)(2) to add new subparagraph (F) to require that the application include a list of contacts for those States, Tribes, and Territories any portion of which is identified to be within the area of review (AOR) of the geologic storage project based on the map showing the injection well and the AOR consistent with 40 CFR §146.82(a)(2).

The Commission proposes to amend §5.203(b)(2)(A) to require that the applicant show within the AOR on the map the number or name and location of stratigraphic boreholes consistent with 40 CFR §146.82(a)(2).

The Commission proposes to amend §5.203(d)(1)(C), which requires the applicant to demonstrate that abandoned wells in the AOR have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs. The proposed amendment requires a demonstration that the materials used are compatible with the carbon dioxide stream consistent with 40 CFR §146.84(c)(3).

The Commission proposes to amend §5.203(d)(2)(B) to clarify that the AOR must be reevaluated at a fixed frequency not to exceed five years throughout the life of the geologic storage facility consistent with the federal requirements at 40 CFR §§146.84(b)(2)(i) and 146.84(e).

The Commission proposes to amend §5.203(e)(1)(B)(v) to clarify that at least one long string casing must extend from the surface to the injection zone and must be cemented by circulating cement to the surface in one or more stages consistent with 40 CFR §146.86(b)(3).

The Commission proposes to amend §5.203(e)(2)(D) to require an applicant to provide to the Commission in the application the external pressure, internal pressure, and axial loading consistent with the requirements in 40 CFR §146.86(b)(1)(ii).

The Commission proposes to amend §5.203(e)(4) to clarify that the applicant must include a description of the stimulation fluids in its description of the proposed well stimulation program if the well is to be stimulated consistent with 40 CFR §146.82(a)(9).

The Commission proposes to amend §5.203(f) to amend the title of the subsection to clarify that the plan for logging, sampling, and testing applies to logging, sampling and testing before injection. There are two separate authorizations associated with Class VI wells: (1) authorization to drill the well and perform logging, sampling and testing, and (2) authorization to inject. The applicant must submit a plan for logging, sampling, and testing of each injection well after the Commission has granted authority to drill a well but prior to authorization to inject carbon dioxide.

The Commission also proposes to amend §5.203(f)(3)(B) to clarify that the operator must take whole cores or sidewall cores representative of the injection zone and confining zone and formation fluid samples from the injection zone and must submit to the director a detailed report prepared by a log analyst that includes: well log analyses (including well logs), core analyses, and formation fluid sample information. The amendment further clarifies that the director may accept data from cores and formation fluid samples from nearby wells or other data if the operator can demonstrate to the director that such data are representative of conditions at the proposed injection well. The director may require the operator to core other formations in the borehole. The amendments to §5.203(f) are consistent with 40 CFR §146.87(b).

The Commission proposes to amend §5.203(j)(2)(C), which relates to the requirement for a plan for monitoring, sampling, and testing after initiation of operation. The proposed amendments state that the plan must include a requirement for the performance of corrosion monitoring of the well materials on a quarterly, rather than semi-annual, basis. The amendments change the reporting requirements such that monitoring results must be reported on a semi-annual, rather than annual, basis consistent with 40 CFR §146.90(c).

The Commission proposes to amend §5.203(j)(2) to add new subparagraph (F). The proposed new subparagraph requires that the plan include a demonstration of external mechanical integrity at least once per year until the injection well is plugged, and, if required by the director, a casing inspection log at a frequency established in the testing and monitoring plan consistent with 40 CFR §146.90(e). The Commission proposes to redesignate §5.203(j)(2)(F) as §5.203(j)(2)(G) and §5.203(j)(2)(G) as §5.203(j)(2)(H).

The Commission proposes to amend §5.203(m)(8)(D) to include examples of existing information (e.g., at Class I, Class II, or Class V experimental technology well sites). This amendment is consistent with the federal requirements at 40 CFR §146.93(c)(2)(iv).

Proposed Amendments to §5.204

The Commission proposes to amend §5.204 to require that the Commission give notice of a draft permit or a public hearing to any State, Tribe, or Territory any portion of which is within the AOR of the Class VI project consistent with 40 CFR §146.82(b). The Commission proposes to redesignate (xi) as (xii) and (xii) as (xiii).

The Commission proposes to amend §5.204(b)(5) to clarify that, upon making a final permit decision, the director shall issue a response to comments, which must specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change, and briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. Furthermore, the Commission must post the response to comments on the Commission's internet website. These amendments are consistent with 40 CFR § 124.17.

Proposed Amendments to §5.205

The Commission proposes amendments to §5.205(c). Amendments proposed in §5.205(c) state that the director shall consider and approve the applicant's demonstration of financial responsibility for all the phases of the geologic sequestration project, including the post-injection storage facility care and closure phase and the plugging phase, prior to issuance of a geologic storage injection well permit.

The Commission proposes to amend §5.205(c)(2)(A)(i) and (C)(i) to clarify that the written estimate of the highest likely dollar

amount necessary to perform post-injection site closure (PISC) monitoring and closure of the facility must include plugging of all injection wells and that the amount of financial assurance required to be filed under this subchapter must include plugging of all injection wells consistent with 40 CFR 146.85(a)(2)(ii).

The Commission proposes to amend §5.205(c)(2)(C)(i) to clarify that the amount of financial assurance required to be filed under this subchapter must include plugging, and that the cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

The Commission proposes to amend §5.205(c)(2)(D) to add new (iii) to clarify that the qualifying financial responsibility instruments must comprise protective conditions of coverage. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument; and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable. In addition, an operator must provide that their financial instrument may not cancel, terminate or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the operator and the director. The cancellation must not be final until at least 120 days after the Commission receives the cancellation notice. The operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable or possible, any funds from the instrument being cancelled must be released within 60 days of notification by the director.

Furthermore, operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic storage project. The instrument may be automatically renewed as long as the operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

The Commission also proposes new §5.205(c)(2)(D)(iii)(III) to state that cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect if on or before the date of expiration: the director deems the facility abandoned; the permit is terminated or revoked or a new permit is denied; closure is ordered by the director or a U.S. district court or other court of competent jurisdiction; the operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid. These amendments are consistent with 40 CFR §146.85(a)(4).

The Commission proposes to amend §5.205(c)(2)(E) to require that, during the active life of the geologic storage project, the operator adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with subsection (c)(2)(C)(i) of §5.205 and provide this adjustment to the director. The operator must also provide to the director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and remedial response plan.

The Commission proposes to amend §5.205(c)(2)(F) to clarify that the director must approve annual written updates of the cost estimate to increase or decrease the cost estimate to account for any changes to the AOR and corrective action plan, the emergency response and remedial action plan, the injection well plugging plan, and the PISC and closure plan. In addition, during the active life of the geologic storage project, the operator must revise the cost estimate no later than 60 days after the director has approved the request to modify the AOR and corrective action plan, the injection well plugging plan, the PISC and closure plan, and the emergency and response plan, if the change in the plan increases the cost. If a change to a plan decreases the cost, any withdrawal of funds must be approved by the director. Any decrease to the value of the financial assurance instrument must first be approved by the director. The revised cost estimate must be adjusted for inflation as specified in §5.205(c)(2)(E). Furthermore, the operator must provide to the director, within 60 days of notification by the director (rather than upon request) an adjustment of the cost estimate if the director determines during the annual evaluation of the qualifying financial responsibility instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action, injection well plugging and PISC and closure, and emergency and remedial response. These amendments are consistent with the federal requirements in 40 CFR §146.85(c)(1).

The Commission proposes to amend §5.205(c)(2) to add new subparagraph (G) to require that, whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the director, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the operator has received written approval from the director. These amendments are consistent with the federal requirements in 40 CFR §146.85(e).

The Commission proposes to amend §5.205(c)(2) to add new subparagraph (H) to state that the requirement to maintain adequate financial responsibility is directly enforceable regardless of whether the requirement is a condition of the permit. Proposed new subparagraph (H)(i) clarifies that the operator must maintain financial responsibility until the director receives and approves the completed post-injection storge facility care and closure plan and approves storage facility closure. Proposed new subparagraph (H)(ii) states that the operator may be released from a financial instrument in the following circumstances: (1) the operator has completed the phase of the geologic storage project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the director, including obtaining financial responsibility for the next phase of the geologic storage project, if required; or (2) the operator has submitted a replacement financial instrument and received written approval from the director accepting the new financial instrument and releasing the operator from the previous financial instrument. These amendments are consistent with the requirements at 40 CFR §146.85(b)(2).

The Commission proposes to amend §5.205(c) to add new paragraph (5) to clarify that the operator must maintain the required financial responsibility regardless of the status of the director's re-

view of the financial responsibility demonstration consistent with 40 CFR §146.85(a)(5)(ii).

Proposed Amendments to §5.206

The Commission proposes to amend §5.206(a) to divide the subsection into two paragraphs. New paragraph (2) clarifies that a permit will include a condition that states that the permit may be modified, revoked and reissued, or terminated for cause and that the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition. These amendments are consistent with the requirements in 40 CFR §144.51(f).

The Commission proposes to amend §5.206(b) to add new paragraph (4) to state that the director may issue a permit under this subchapter if the applicant demonstrates and the director finds that the construction, operation, maintenance, conversion, plugging, abandonment, or any other injection activity does not allow the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. This amendment is consistent with the federal requirements in 40 CFR §144.12(a).

The Commission proposes to amend §5.206(c)(2) to clarify that the well completion information must be filed on Commission Form W-2, Oil Well Potential Test, Completion or Recompletion Report and Log. This amendment is consistent with the federal requirements in 40 CFR §146.82(c)(5). The Commission Form W-2, and all other Commission forms, can be found by clicking on the "Forms" tab on the Commission's website.

The Commission proposes to amend §5.206(d)(1) to clarify the information that the operator must submit and the director must consider before granting approval for the operation of a Class VI injection well. Proposed new subparagraph (A) includes the existing language. Proposed new subparagraph (B) clarifies that, prior to approval for the operation of a Class VI injection well, the operator shall submit, and the director shall consider, certain information detailed in proposed new (i) through (x). Proposed new (i) lists the final AOR based on modeling, using data obtained during logging and testing of the well and the formation as required by subsection (d)(1)(B)(ii), (iii), (iv), (v), (vi), (vii), (viii) and (x).

Proposed new §5.206(d)(1)(B)(ii) requires the operator to submit and the director to consider any relevant updates, based on data obtained during logging and testing of the well and the formation as required by §5.203(f), to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations submitted to satisfy the requirements of subsection (d)(1)(B)(iii), (iv), (v), (vi), (vii), and (x).

Proposed new §5.206(d)(1)(B)(iii) requires the operator to submit and the director to consider information on the compatibility of the CO_2 stream with fluids in the injection zones and minerals in both the injection and the confining zones, based on the results of the formation testing program, and with the materials used to construct the well.

Proposed new §5.206(d)(1)(B)(iv) requires the operator to submit and the director to consider the results of the formation testing program required by §5.203(f). Proposed new §5.206(d)(1)(B)(v) requires the operator to submit and the director to consider the final injection well construction procedures that meet the requirements of §5.203(e).

Proposed new §5.206(d)(1)(B)(vi) requires the operator to submit and the director to consider the status of corrective action on wells in the AOR. Proposed new §5.206(d)(1)(B)(vii) requires the operator to submit and the director to consider all available logging and testing program data on the well required by §5.203(f).

Proposed new §5.206(d)(1)(B)(viii)-(x) require the operator to submit and the director to consider: a demonstration of mechanical integrity pursuant to §5.203(h); any updates to the proposed AOR and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection storage facility care and closure plan, or the emergency and remedial response plan submitted under §5.203(m), which are necessary to address new information collected during logging and testing of the well and the formation as required by §5.206, and any updates to the alternative post-injection storage facility care timeframe demonstration submitted under §5.203(m), which are necessary to address new information collected during the logging and testing of the well and the formation as required by §5.206; and any other information requested by the director.

These amendments are consistent with the federal requirements in 40 CFR §146.82(c) and distinguish between the requirements of the initial permit application and the requirements to update any permit application/permit elements prior to granting approval to inject.

The Commission proposes to amend §5.206(e) to add new paragraph (5). The new paragraph states that samples and measurements taken for the purpose of monitoring must be representative of the monitored activity and that the permittee must retain records of all monitoring information, including the following: (i) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended the director at any time; and (ii) the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment of the injection well. The director may require the operator to submit the records to the director at the conclusion of the retention period. Proposed new §5.206(e)(5)(C) requires that records of monitoring information include: (i) the date, exact place, and time of sampling or measurements; (ii) the individuals who performed the sampling or measurements; (iii) the dates analyses were performed; (iv) the individuals who performed the analyses; (v) the analytical techniques or methods used; and (vi) the results of such analyses. Proposed new paragraph (5)(D) requires that operators of Class VI wells retain records as specified in Subchapter B of Chapter 5.

The Commission also proposes to amend §5.206(f) to revise paragraph (2) add a permit condition that clarifies that the operator must establish mechanical integrity prior to commencing injection. The Commission proposes to add new paragraph (3) to add a permit condition that states that, if the director determines that the injection well lacks mechanical integrity, the director shall give written notice of the director's determination to the operator. Unless the director requires immediate cessation, the operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well pursuant or require the permittee to perform such additional construction, operation, monitoring, reporting and correc-

tive action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The operator may resume injection upon written notification of the director's determination that the operator has demonstrated the well has mechanical integrity.

The Commission proposes to add new paragraph (4) in §5.206(f) to add a permit condition that states that the director may allow the operator of a well which lacks internal mechanical integrity to continue or resume injection if the operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs. Existing paragraph (4) is renumbered (5).

These amendments ensure that the rules meet the minimum standards of the federal requirements in 40 CFR §144.51.

The Commission also proposes to amend §5.206(g) to clarify that the AOR must be reevaluated at a minimum frequency not to exceed five years as specified in the approved AOR and corrective action plan. In addition, the AOR must be reevaluated whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator.

The Commission proposes to amend §5.206(g)(4) to clarify that any amendments to the AOR and corrective action plan must be approved by the director, must be incorporated into the permit, and are subject to the permit modification requirements in §5.202.

The Commission proposes to add new paragraph (g)(5) to require that the operator retain all modeling inputs and data used to support AOR reevaluations for at least 10 years.

The Commission proposes to amend §5.206(h)(1) to clarify that the emergency and remedial response plan and the demonstration of financial responsibility must account for the AOR delineated as specified in §5.203(d)(1)(A) - (C) or the most recently evaluated AOR delineated under subsection (g) of §5.206, regardless of whether or not corrective action in the AOR is phased consistent with 40 CFR §146.84(f).

The Commission proposes to amend §5.206(h)(3) to clarify that, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW, except as authorized by an aquifer exemption, the director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including plugging of the injection well) as are necessary to prevent such movement. This amendment is consistent with the federal requirements in 40 CFR §144.12(b).

The Commission proposes to amend §5.206(k)(5) require the operator to submit a plugging record (Form W-3) as required by §3.14 of this title (relating to Plugging) after the director has authorized storage facility closure and plugged all wells in accordance with the approved plugging plan. This amendment is consistent with the federal requirements in 40 CFR §144.52(a)(7)(i).

The Commission proposes to amend §5.206(m) to clarify that the operator must retain for 10 years following storage facility closure records collected to prepare the permit application, data on the nature and composition of all injected fluids, in addition to other records and that the operator must submit the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission. This amendment is consistent with the federal requirements in 40 CFR §146.91(f)(1).

The Commission proposes to amend §5.206(m) to add requirements to make the rules consistent with the federal requirements at 40 CFR §144.51(j). New paragraph (1) adds a permit condition that the permittee must retain records of all monitoring information, including the following: (A) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by the director at any time; and (B) the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures. The director may require the operator to submit the records to the director at the conclusion of the retention period.

Proposed new paragraph (2) adds a permit condition that records of monitoring information shall include: (A) the date, exact place, and time of sampling or measurements; (B) the individuals who performed the sampling or measurements; (C) the dates analyses were performed; (D) the individuals who performed the analyses; (E) the analytical techniques or methods used; and (F) the results of such analyses.

Proposed new paragraph (3) specifies records that the operator must retain for 10 years following storage facility closure. The operator must retain records collected to prepare the permit application, data on the nature and composition of all injected fluids, and records collected during the PISC period. The operator must submit the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission.

The Commission proposes to amend §5.206(o)(1) to clarify that permits issued under Subchapter B of Chapter 5 shall be issued for the operating life of the facility and the post-injection storage facility care period. The director shall review each permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated.

The Commission proposes to amend §5.206(o)(2)(J) to clarify that a condition shall be included in a Class VI permit to require that if the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. These amendments are consistent with federal requirements in 40 CFR §144.53(a)(2)(ii).

The Commission proposes to amend §5.206(o)(2) to add new subparagraph (K) to add a permit condition that states that the permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

The Commission proposes to add new §5.206(o)(2)(L) to require a permit condition that all applications, reports, or information be signed and certified.

The Commission also proposes to add new §5.206(o)(2)(M) to add the following permit conditions: (i) the permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility; (ii) the permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompli-

ance with permit requirements; (iii) the permit is not transferable to any person except after notice to and approval by the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA; (iv) monitoring results shall be reported at the intervals specified elsewhere in the permit; (v) reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 30 days following each schedule date; and (vi) the permittee shall report any noncompliance which may endanger health or the environment including any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW, and any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs. Proposed new §5.206(o)(2)(M)(vi) requires the information to be provided orally to the director within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided to the director within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Proposed new §5.206(o)(2) (N) adds a requirement that where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

Proposed new §5.206(o)(2) (O) requires the permittee to report all instances of noncompliance not reported under subsection (e) of this section, subparagraphs (J) and (M) of paragraph (2), and §5.207(a)(2)(A), at the time monitoring reports are submitted. The reports shall contain any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW, and any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs. Any information shall be provided orally to the director within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided to the director within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

Proposed new §5.206(o)(2) (P) requires that new permits, and to the extent allowed under §5.202 modified or revoked and reissued permits, incorporate each of the applicable requirements referenced in this section. An applicable requirement is a State statutory or regulatory requirement that takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in §5.202.

Proposed new §5.206(o)(2) (Q) states that in addition to conditions required in all permits, the director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Safe Drinking Water Act and 40 CFR Parts 144, 145, 146 and 124. These amendments are consistent with the federal requirements in 40 CFR §144.52.

Proposed Amendments to §5.207

The Commission proposes to amend §5.207(a)(2)(A) to require the operator to report certain operating information to the director and the appropriate district office orally as soon as practicable, but within 24 hours of discovery, and in writing within five working days of discovery. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Commission proposes to amend §5.207(a)(2)(A) to add new clause (i), which is existing language revised to delete repetitive language. Proposed new clause (ii) would require reporting of any evidence that the injected CO_2 stream or associated pressure front may cause an endangerment to a USDW. Proposed new clause (iii) requires reporting of any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs. Proposed new clause (iv) requires the reporting of any triggering of a shut-off system (i.e., down-hole or at the surface). Proposed new clause (v) requires the reporting of any failure to maintain mechanical integrity. These amendments are consistent with the federal requirements in 40 CFR §146.91(c)(2).

The Commission proposes to reorganize §5.207(a)(2)(D) and add new (E) to clarify requirements for annual reports and updates.

The Commission proposes to amend §5.207(e) to require that the operator must retain all testing and monitoring data collected under §5.203 for the permit application for at least 10 years following storage facility closure. The operator must also retain data on the nature and composition of all injected fluids collected pursuant to §5.203(j)(2)(A) until 10 years after storage facility closure. At the end of the retention period, the operator shall submit the records to the director. Third, the operator must retain all testing and monitoring data collected pursuant to the plans required under §5.203(j) of this title, including wellhead pressure records, metering records, and integrity test results, and modeling inputs and data used to support AOR calculations for at least 10 years after the data is collected.

Proposed new §5.207(e)(4) requires that the operator retain for 10 years following storage facility closure well plugging reports, post-injection storage facility care data, including data and information used to develop the demonstration of the alternative post-injection storage facility care timeframe, and the closure report collected pursuant to the requirements of §5.206(k)(6) and (m). Proposed new §5.207(e)(5) contains existing language. Proposed new §5.207(e)(6) and (7) clarify that the director has authority to require the operator to retain any records required in Subchapter B for longer than 10 years after storage facility closure and to require the operator to submit the records to the director at the conclusion of the retention period. These amendments are consistent with 40 CFR §146.91(f).

Leslie Savage, Chief Geologist, Oil and Gas Division, has determined that for each year of the first five years that the amendments will be in effect, there will be no additional economic costs

for persons required to comply with the proposed amendments. The federal regulations governing Class VI wells may create costs for persons required to comply. However, persons required to comply with the federal requirements must do so regardless of whether the requirements are adopted in Commission rules because if the Commission is not approved to enforce the Class VI program, EPA will enforce the same requirements. The proposed amendments to Commission rules do not create any additional economic costs for persons required to comply.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect, the public benefit will be the Commission's evaluation of information regarding geologic storage of anthropogenic carbon dioxide, and consideration of other factors related to the prevention of pollution of surface and subsurface waters of the state and promotion of safety in accordance with Texas Natural Resources Code, §85.042 and §91.101. Achieving meaningful reductions in CO_2 emissions while preserving the benefits of our energy-intensive economy cannot be accomplished without significant deployment of carbon sequestration.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule and project the economic impact of the rule on small businesses. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state, the analysis must consider the use of regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

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

Based on the information available to the Commission regarding oil and gas operators and the complexity of the Class VI UIC requirements, Ms. Savage has concluded that, of the businesses that could be affected by the proposed amendments, it is unlikely that many would be classified as small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001. Furthermore, the bulk of the proposed amendments are necessary to ensure that the Commission's regulations meet the requirements of the U.S. Environmental Protection Agency (EPA) to enable EPA to approve state primacy for the Class VI UIC program. If the state does not have primacy for the Class VI program, EPA is the permitting agency. Therefore, the costs imposed by the proposed amendments would be comparable to the costs imposed by the federal regulations.

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

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

The Commission reviewed the proposed amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

During the first five years that the rules would be in full effect, the proposed amendments adopted pursuant to House Bill 1284 (87th Legislature, Regular Session, 2021) could create a new government program because the proposed amendments will allow the Commission to apply for state primacy such that the state may administer a Class VI UIC program. However, EPA must first approve the Commission's application for primacy. The proposed amendments would not create a new regulation because the Commission is adopting requirements that are included in existing federal regulations. Similarly, because federal regulations are in place to govern Class VI UIC activities, the proposed amendments also do not increase responsibility for persons under the Commission's jurisdiction and would not increase or decrease the number of individuals subject to the rules. If the Commission's primacy application is approved, the state will administer the Class VI UIC program rather than EPA. Therefore, the proposed amendments could create an increase in fees paid to the Commission. The Commission does not propose amending the fees contained in §5.205 but may receive those fees if it is approved to administer the Class VI UIC program. Finally, the proposed amendments would not affect the state's economy and would not require a change in employee positions.

As part of the public comment period, the Commission will hold a virtual public hearing to receive comments on the proposed amendments to Chapter 5.

The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, Commission staff will be available after the meeting to discuss the proposal. Depending on the number of persons wishing to

speak, the Commission may impose a time limit so that everyone who wishes to make a public comment will have the opportunity to do so.

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to participate in the hearing and provide oral comments and/or want their participation on record must register in accordance with instructions provided on the Commission's website. Information regarding the public hearing will be posted on the Commission's website at least 10 business days in advance of the hearing, which will occur within the comment period. Instructions for participating in the hearing will be sent to those who register for the hearing. Individuals who do not wish to provide oral comments but would like to view the hearing may do so. A link to the webcast will be added on the Commission's website.

Any individual with a disability who plans to participate in the hearing and who requires auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests may be made to the Human Resources Department of the Railroad Commission of Texas by mail at P.O. Box 12967, Austin, Texas 78711-2967; by telephone at 512-463-6981 or TDD No. 512-463-7284; by e-mail at ADA@rrc.texas.gov; or in person at 1701 North Congress Avenue, Suite 12-110, Austin, Texas.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, July 31, 2023. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter R, relating to authorization for multiple or alternative uses of wells; Texas Water Code, Chapter 27, Subchapter C-1, which gives the Commission jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir; Texas Health and Safety Code §382.502, which allows the Commission to adopt by rule standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository and requires the Commission to ensure standards comply with federal requirements issued by the EPA; and Texas Water Code, Chapter 120, which establishes the Anthropogenic Carbon Dioxide Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used by the Commission for only certain specified activities associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §5.102

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources Code, Chapter 91, Subchapter R; Texas Health and Safety Code §382.502; and Texas Water Code, Chapters 27 and 120.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, Texas Health and Safety Code, Chapter 382, and Texas Water Code, Chapters 27 and 120.

§5.102 Definitions.

The following terms, when used in Subchapter B of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Anthropogenic carbon dioxide (CO_2)--

(A) CO_2 that has been captured from or would otherwise have been released into the atmosphere that has been:

(i) separated from any other fluid stream; or

(ii) captured from an emissions source, including:

(I) an advanced clean energy project as defined by Health and Safety Code, §382.003, or another type of electric generation facility; or

(II) an industrial source of emissions; and

(iii) any incidental associated substance derived from the source material for, or from the process of capturing, CO_2 described by clause (i) of this subparagraph; and

(iv) any substance added to CO_2 described by clause (i) of this subparagraph to enable or improve the process of injecting the CO_2; and

(B) does not include naturally occurring CO_2 that is produced, acquired, recaptured, recycled, and reinjected as part of enhanced recovery operations.

(3) Anthropogenic CO_2 injection well--An injection well used to inject or transmit gaseous, liquid, or supercritical anthropogenic CO_2 into a reservoir.

(4) Aquifer--A geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(5) Area of review (AOR)--The subsurface three-dimensional extent of the CO_2 stream plume and the associated pressure front,

as well as the overlying formations, any underground sources of drinking water overlying an injection zone along with any intervening formations, and the surface area above that delineated region.

(6) Carbon dioxide (CO_2) plume--The underground extent, in three dimensions, of an injected CO_2 stream.

(7) Carbon dioxide (CO_2) stream--CO_2 that has been captured from an emission source or the atmosphere, incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. The term does not include any CO_2 stream that meets the definition of a hazardous waste under 40 CFR Part 261.

(8) Casing--A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

(9) Cementing--The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

(10) Class VI well--Any well used to inject anthropogenic CO_2 specifically for the purpose of the long-term containment of a gaseous, liquid, or supercritical CO_2 in subsurface geologic formations.

(11) Code of Federal Regulations (CFR)--The codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

(12) Commission--A quorum of the members of the Railroad Commission of Texas convening as a body in open meeting.

(13) Confining zone--A geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone or zones that acts as barrier to fluid movement. For Class VI wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone or zones that acts as a barrier to fluid movement.

(14) Corrective action--Methods to assure that wells within the area of review do not serve as conduits for the movement of fluids into or between underground sources of drinking water, including the use of corrosion resistant materials, where appropriate.

(15) Delegate--The person authorized by the director to take action on behalf of the Railroad Commission of Texas under this chapter.

(16) Director--The director of the Oil and Gas Division of the Railroad Commission of Texas or the director's delegate.

(17) Division--The Oil and Gas Division of the Railroad Commission of Texas.

(18) Draft permit--A document prepared indicating the director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

(19) Enhanced recovery operation--Using any process to displace hydrocarbons from a reservoir other than by primary recovery, including using any physical, chemical, thermal, or biological process and any co-production project. This term does not include pressure maintenance or disposal projects.

(20) EPA--The United States Environmental Protection Agency.

(21) [~~(20)~~] Exempted aquifer--An aquifer or its portion that meets the criteria in the definition of underground source of drinking water but which has been exempted according to the procedures in 40 CFR §144.7.

(22) [~~(21)~~] Facility closure--The point at which the operator of a geologic storage facility is released from post-injection storage facility care responsibilities.

(23) [~~(22)~~] Flow rate--The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

(24) [~~(23)~~] Fluid--Any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(25) [~~(24)~~] Formation--A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(26) [~~(25)~~] Formation fluid--Fluid present in a formation under natural conditions.

(27) [~~(26)~~] Fracture pressure--The pressure that, if applied to a subsurface formation, would cause that formation to physically fracture.

(28) [~~(27)~~] Geologic storage--The long-term containment of gaseous, liquid, or supercritical anthropogenic CO_2 in subsurface geologic formations.

(29) [~~(28)~~] Geologic storage facility or storage facility--The underground geologic formation, underground equipment, injection wells, and surface buildings and equipment used or to be used for the geologic storage of anthropogenic CO_2 and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the geologic storage of anthropogenic CO_2. The term includes the subsurface three-dimensional extent of the CO_2 plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region, and any reasonable and necessary areal buffer and subsurface monitoring zones. The term does not include a pipeline used to transport CO_2 from the facility at which the CO_2 is captured to the geologic storage facility. The storage of CO_2 incidental to or as part of enhanced recovery operations does not in itself automatically render a facility a geologic storage facility.

(30) [~~(29)~~] Good faith claim--A factually supported claim based on a recognized legal theory to a perpetual property interest [~~continuing possessory right~~] in pore space to be used for geologic storage of carbon dioxide, such as:

(A) [~~evidence of~~] a currently valid lease evidenced by a recorded memorandum of lease;

(B) a recorded perpetual easement; or

(C) a recorded deed conveying a fee interest in the pore space.

(31) [~~(30)~~] Injection zone--A geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive CO_2 through a well or wells associated with a geologic storage facility.

(32) [~~(31)~~] Injection well--A well into which fluids are injected.

(33) [~~(32)~~] Interested person--Any person who expresses an interest in an application, permit, or Class VI UIC well.

(34) [~~(33)~~] Limited English-speaking household--A household in which all members 14 years and older have at least some difficulty with English.

(35) [~~(34)~~] Lithology--The description of rocks on the basis of their physical and chemical characteristics.

(36) [~~(35)~~] Mechanical integrity--

(A) An anthropogenic CO_2 injection well has mechanical integrity if:

(i) there is no significant leak in the casing, tubing, or packer; and

(ii) there is no significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection well bore as a result of operation of the injection well.

(B) The Commission will consider any deviations during testing that cannot be explained by the margin of error for the test used to determine mechanical integrity, or other factors, such as temperature fluctuations, to be an indication of the possibility of a significant leak and/or the possibility of significant fluid movement into a stratum containing an underground source of drinking water through channels adjacent to the injection wellbore.

(37) [~~(36)~~] Monitoring well--A well either completed or re-completed to observe subsurface phenomena, including the presence of anthropogenic CO_2, pressure fluctuations, fluid levels and flow, temperature, and/or in situ water chemistry.

(38) [~~(37)~~] Offshore--The area in the Gulf of Mexico seaward of the coast that is within three marine leagues of the coast.

(39) [~~(38)~~] Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the rules and regulations regarding the permitting, physical operation, closure, and post-closure care of a geologic storage facility, or such person's authorized representative.

(40) [~~(39)~~] Packer--A device lowered into a well to produce a fluid-tight seal.

(41) [~~(40)~~] Permit--An authorization, license, or equivalent control document issued by the Commission to implement the requirements of this chapter.

(42) [~~(41)~~] Person--A natural person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(43) [~~(42)~~] Plugging--The act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

(44) [~~(43)~~] Post-injection facility care--Monitoring and other actions (including corrective action) needed following cessation of injection to assure that underground sources of drinking water are not endangered and that the anthropogenic CO_2 remains confined to the permitted injection interval.

(45) [~~(44)~~] Pressure front--The zone of elevated pressure that is created by the injection of the CO_2 stream into the subsurface where there is a pressure differential sufficient to cause movement of the CO_2 stream or formation fluids from the injection zone into an underground source of drinking water.

(46) [~~(45)~~] Reservoir--A natural or artificially created subsurface stratum, formation, aquifer, cavity, void, or coal seam.

(47) Stratigraphic test well--An exploratory well drilled for the purpose of gathering information in connection with a proposed carbon dioxide geologic storage project, including formation testing to obtain information on the chemical and physical characteristics of the injection zones and confining zones. Such testing may include injectivity testing.

(48) [~~(46)~~] Stratum (or strata)--A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

(49) [~~(47)~~] Surface casing--The first string of well casing to be installed in the well.

(50) [~~(48)~~] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move beyond the confining zone.

(51) UIC--Underground injection control.

(52) [~~(49)~~] Underground source of drinking water (USDW)--An aquifer or its portion which is not an exempt aquifer as defined in 40 CFR §146.4 and which:

(A) supplies any public water system; or

(B) contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 mg/l total dissolved solids.

(53) [~~(50)~~] Well injection--The subsurface emplacement of fluids through a well.

(54) [~~(51)~~] Well stimulation--Any of several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for fluid to move more readily into the formation including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(55) [~~(52)~~] Workover--An operation in which a down-hole component of a well is repaired or the engineering design of the well is changed. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

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

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SUBCHAPTER B. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE (CO2)

16 TAC §§5.201, 5.203 - 5.207

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code, Chapter 91, Subchapter R, relating to authorization for multiple or alternative uses of wells; Texas Water Code, Chapter 27, Subchapter C-1, which gives the Commission jurisdiction over the geologic storage of carbon dioxide in, and the injection of carbon dioxide into, a reservoir that is initially or may be productive of oil, gas, or geothermal resources or a saline formation directly above or below that reservoir; Texas Health and Safety Code §382.502, which allows the Commission to adopt by rule standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository and requires the Commission to ensure standards comply with federal requirements issued by the EPA; and Texas Water Code, Chapter 120, which establishes the Anthropogenic Carbon Dioxide Storage Trust Fund, a special interest-bearing fund in the state treasury, to consist of fees collected by the Commission and penalties imposed under Texas Water Code, Chapter 27, Subchapter C-1, and to be used by the Commission for only certain specified activities associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052; Texas Natural Resources Code, Chapter 91, Subchapter R; Texas Health and Safety Code §382.502; and Texas Water Code, Chapters 27 and 120.

Cross reference to statute: Texas Natural Resources Code, Chapters 81 and 91, Texas Health and Safety Code, Chapter 382, and Texas Water Code, Chapters 27 and 120.

§5.201. Applicability and Compliance.

(a) Scope of jurisdiction. This subchapter applies to the geologic storage and associated injection of anthropogenic CO_2 in this state, both onshore and offshore.

(b) Injection of CO_2 for enhanced recovery.

(1) This subchapter does not apply to the injection of fluid through the use of an injection well regulated under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) for the primary purpose of enhanced recovery operations from which there is reasonable expectation of more than insignificant future production volumes of oil, gas, or geothermal energy and operating pressures are no higher than reasonably necessary to produce such volumes or rates. However, the operator of an enhanced recovery project may propose to also permit the enhanced recovery project as a CO_2 geologic storage facility simultaneously.

(2) If the director determines that an injection well that is permitted for the injection of CO_2 for the purpose of enhanced recovery regulated under §3.46 of this title should be regulated under this subchapter because the injection well is no longer being used for the primary purpose of enhanced recovery operations or there is an increased risk to USDWs, the director must notify the operator of such determination and allow the operator at least 30 days to respond to the determination and to file an application under this subchapter or cease operation of the well. In determining if there is an increased risk to USDWs, the director shall consider the following factors:

(A) increase in reservoir pressure within the injection zone;

(B) increase in CO_2 injection rates;

(C) decrease in reservoir production rates;

(D) distance between the injection zone and USDWs;

(E) suitability of the enhanced oil or gas recovery AOR delineation;

(F) quality of abandoned well plugs within the AOR;

(G) the storage operator's plan for recovery of CO_2 at the cessation of injection;

(H) the source and properties of injected CO_2; and

(I) any additional site-specific factors as determined by the director.

(3) This subchapter does not preclude an enhanced oil recovery project operator from opting into a regulatory program that provides carbon credit for anthropogenic CO_2 sequestered through the enhanced recovery project.

(c) Injection of acid gas. This subchapter does not apply to the disposal of acid gas generated from oil and gas activities from leases, units, fields, or a gas processing facility. Injection of acid gas that contains CO_2 and that was generated as part of oil and gas processing may continue to be permitted as a Class II injection well. The potential need to transition a well from Class II to Class VI shall be based on the increased risk to USDWs related to significant storage of CO_2 in the reservoir, where the regulatory tools of the Class II program cannot successfully manage the risk. In determining if there is an increased risk to USDWs, the director shall consider the following factors:

(1) the reservoir pressure within the injection zone;

(2) the quantity of acid gas being disposed of;

(3) the distance between the injection zone and USDWs;

(4) the suitability of the disposed waste AOR delineation;

(5) the quality of abandoned well plugs within the AOR;

(6) the source and properties of injected acid gas; and

(7) any additional site-specific factors as determined by the director.

(d) This subchapter applies to a well that is authorized as or converted to an anthropogenic CO_2 injection well for geologic storage (a Class VI injection well). This subchapter applies regardless of whether the well was initially completed for the purpose of injection and geologic storage of anthropogenic CO_2 or was initially completed for another purpose and is converted to the purpose of injection and geologic storage of anthropogenic CO_2, except that the Commission may not issue a permit under this subchapter for the conversion of a previously plugged and abandoned Class I injection well, including any associated waste plume, to a Class VI injection well.

(e) Expansion of aquifer exemption. The areal extent of an aquifer exemption for a Class II enhanced recovery well may be expanded for the exclusive purpose of Class VI injection for geologic storage if the aquifer does not currently serve as a source of drinking water; and the total dissolved solids content is more than 3,000 milligrams per liter (mg/l) and less than 10,000 mg/l; and it is not reasonably expected to supply a public water system in accordance with 40 CFR §146.4. An operator seeking such an expansion shall submit, concurrent with the permit application, a supplemental report that complies with 40 CFR §144.7(d). The Commission adopts 40 CFR §144.7 and §146.4 by reference, effective September 20, 2022.

(f) Injection depth waiver. An operator may seek a waiver from the Class VI injection depth requirements for geologic storage to allow injection into non-USDW formations while ensuring that USDWs above and below the injection zone are protected from endangerment. An operator seeking a waiver of the requirement to inject below the lowermost USDW shall submit, concurrent with the permit application or a permit amendment application, a supplemental report that complies with 40 CFR §146.95. The Commission adopts 40 CFR §146.95 by reference, effective September 20, 2022.

(g) This subchapter does not apply to the injection of any CO_2 stream that meets the definition of a hazardous waste under 40 CFR Part 261.

(h) An operator shall apply for a permit to drill (Form W-1) prior to drilling a stratigraphic test well, notify the UIC Section of the application, and submit a completion report (Form W-2/G-1) once the well is completed. If the operator plans to convert the stratigraphic test well to a Class VI injection well, the well construction shall meet all of the requirements of this subchapter for a Class VI injection well. Any stratigraphic test well drilled for exploratory purposes only shall be governed by the provisions of Commission rules in Chapter 3 of this title (relating to Oil and Gas Division) applicable to the drilling, safety, casing, production, abandoning, and plugging of wells.

(i) [~~(h)~~] If a provision of this subchapter conflicts with any provision or term of a Commission order or permit, the provision of such order or permit controls.

(j) [~~(i)~~] The operator of a geologic storage facility must comply with the requirements of this subchapter as well as with all other applicable Commission rules and orders, including the requirements of Chapter 8 of this title (relating to Pipeline Safety Regulations) for pipelines and associated facilities.

§5.203. Application Requirements.

(a) General.

(1) Form and filing; signatories; certification.

(A) Form and filing. Each applicant for a permit to construct and operate a geologic storage facility must file an application with the division in Austin on a form prescribed by the Commission. The applicant must file the application and all attachments with the division and with EPA Region 6 in an electronic format approved by EPA. On the same date, the applicant must file one copy with each appropriate district office and one copy with the Executive Director of the Texas Commission on Environmental Quality.

(B) Signatories to permit applications. An applicant must ensure that the application is executed by a party having knowledge of the facts entered on the form and included in the required attachments. All permit applications shall be signed as specified in this subparagraph:

(i) For a corporation, the permit application shall be signed by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship, the permit application shall be signed by a general partner or the proprietor, respectively.

(iii) For a municipality, State, Federal, or other public agency, the permit application shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes the chief executive officer of the agency or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(C) Certification. Any person signing a permit application or permit amendment application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(2) General information.

(A) On the application, the applicant must include the name, mailing address, and location of the facility for which the application is being submitted and the operator's name, address, telephone number, Commission Organization Report number, and ownership of the facility.

(B) When a geologic storage facility is owned by one person but is operated by another person, it is the operator's duty to file an application for a permit.

(C) The application must include a listing of all required [~~relevant~~] permits or construction approvals for the facility received or applied for under federal or state environmental programs;

(D) A person making an application to the director for a permit under this subchapter must submit a copy of the application to the Texas Commission on Environmental Quality (TCEQ) and must submit to the director a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO_2 injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ. The letter must be submitted to the director before any permit under this subchapter may be issued.

(E) The application must indicate whether the geologic storage project is located on Indian lands.

(F) The application must include a list of contacts for those States, Tribes, and Territories any portion of which is identified to be within the AOR of the geologic storage project based on the map showing the injection well and the AOR.

(3) Application completeness. The Commission shall not issue a permit before receiving a complete application. A permit application is complete when the director determines that the application contains information addressing each application requirement of the regulatory program and all information necessary to initiate the final review by the director.

(4) Reports. An applicant must ensure that all descriptive reports are prepared by a qualified and knowledgeable person and include an interpretation of the results of all logs, surveys, sampling, and

tests required in this subchapter. The applicant must include in the application a quality assurance and surveillance plan for all testing and monitoring, which includes, at a minimum, validation of the analytical laboratory data, calibration of field instruments, and an explanation of the sampling and data acquisition techniques.

(5) If otherwise required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a licensed professional engineer or geoscientist must conduct the geologic and hydrologic evaluations required under this subchapter and must affix the appropriate seal on the resulting reports of such evaluations.

(b) Surface map and information. Only information of public record is required to be included on this map.

(1) The applicant must file with the director a surface map delineating the proposed location of any injection wells and the boundary of the geologic storage facility for which a permit is sought and the applicable AOR.

(2) The applicant must show within the AOR on the map the number or name and the location of:

(A) all known artificial penetrations through the confining zone, including stratigraphic boreholes, injection wells, producing wells, inactive wells, plugged wells, or dry holes;

(B) the locations of cathodic protection holes, subsurface cleanup sites, bodies of surface water, springs, surface and subsurface mines, quarries, and water wells; and

(C) other pertinent surface features, including pipelines, roads, and structures intended for human occupancy.

(3) The applicant must identify on the map any known or suspected faults expressed at the surface.

(c) Geologic, geochemical, and hydrologic information.

(1) The applicant must submit a descriptive report prepared by a knowledgeable person that includes an interpretation of the results of appropriate logs, surveys, sampling, and testing sufficient to determine the depth, thickness, porosity, permeability, and lithology of, and the geochemistry of any formation fluids in, all relevant geologic formations.

(2) The applicant must submit information on the geologic structure and reservoir properties of the proposed storage reservoir and overlying formations, including the following information:

(A) geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the area from the ground surface to the base of the injection zone within the AOR that indicate the general vertical and lateral limits of all USDWs within the AOR, their positions relative to the storage reservoir and the direction of water movement, where known;

(B) the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of, and the geochemistry of any formation fluids in, the storage reservoir and confining zone and any other relevant geologic formations, including geology/facies changes based on field data, which may include geologic cores, outcrop data, seismic surveys, well logs, and lithologic descriptions, and the analyses of logging, sampling, and testing results used to make such determinations;

(C) the location, orientation, and properties of known or suspected transmissive faults or fractures that may transect the confining zone within the AOR and a determination that such faults or fractures would not compromise containment;

(D) the seismic history, including the presence and depth of seismic sources, and a determination that the seismicity would not compromise containment;

(E) geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone;

(F) a description of the formation testing program used and the analytical results used to determine the chemical and physical characteristics of the injection zone and the confining zone; and

(G) baseline geochemical data for subsurface formations that will be used for monitoring purposes, including all formations containing USDWs within the AOR.

(d) AOR and corrective action. This subsection describes the standards for the information regarding the delineation of the AOR, the identification of penetrations, and corrective action that an applicant must include in an application.

(1) Initial delineation of the AOR and initial corrective action. The applicant must delineate the AOR, identify all wells that require corrective action, and perform corrective action on those wells. Corrective action may be phased.

(A) Delineation of AOR.

(i) Using computational modeling that considers the volumes and/or mass and the physical and chemical properties of the injected CO_2 stream, the physical properties of the formation into which the CO_2 stream is to be injected, and available data including data available from logging, testing, or operation of wells, the applicant must predict the lateral and vertical extent of migration for the CO_2 plume and formation fluids and the pressure differentials required to cause movement of injected fluids or formation fluids into a USDW in the subsurface for the following time periods:

(I) five years after initiation of injection;

(II) from initiation of injection to the end of the injection period proposed by the applicant; and

(III) from initiation of injection until the movement of the CO_2 plume and associated pressure front stabilizes.

(ii) The applicant must use a computational model that:

(I) is based on geologic and reservoir engineering information collected to characterize the injection zone and the confining zone;

(II) is based on anticipated operating data, including injection pressures, rates, temperatures, and total volumes and/or mass over the proposed duration of injection;

(III) takes into account relevant geologic heterogeneities and data quality, and their possible impact on model predictions;

(IV) considers the physical and chemical properties of injected and formation fluids; and

(V) considers potential migration through known faults, fractures, and artificial penetrations and beyond lateral spill points.

(iii) The applicant must provide the name and a description of the model, software, the assumptions used to determine the AOR, and the equations solved.

(B) Identification and table of penetrations. The applicant must identify, compile, and submit a table listing all penetrations, including active, inactive, plugged, and unplugged wells and underground mines in the AOR that may penetrate the confining zone, that are known or reasonably discoverable through specialized knowledge or experience. The applicant must provide a description of each penetration's type, construction, date drilled or excavated, location, depth, and record of plugging and/or completion or closure. Examples of specialized knowledge or experience may include reviews of federal, state, and local government records, interviews with past and present owners, operators, and occupants, reviews of historical information (including aerial photographs, chain of title documents, and land use records), and visual inspections of the facility and adjoining properties.

(C) Corrective action. The applicant must demonstrate whether each of the wells on the table of penetrations has or has not been plugged and whether each of the underground mines (if any) on the table of penetrations has or has not been closed in a manner that prevents the movement of injected fluids or displaced formation fluids that may endanger USDWs or allow the injected fluids or formation fluids to escape the permitted injection zone. The demonstration shall include evidence that the materials used are compatible with the carbon dioxide stream. The applicant must perform corrective action on all wells and underground mines in the AOR that are determined to need corrective action. The operator must perform corrective action using materials suitable for use with the CO_2 stream. Corrective action may be phased.

(2) AOR and corrective action plan. As part of an application, the applicant must submit an AOR and corrective action plan that includes the following information:

(A) the method for delineating the AOR, including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based;

(B) for the AOR, a description of:

(i) the minimum fixed frequency, not to exceed five years, [~~subject to the annual certification pursuant to §5.206(f) of this title (relating to Permit Standards)~~] at which the applicant proposes to re-evaluate the AOR during the life of the geologic storage facility;

(ii) how monitoring and operational data will be used to re-evaluate the AOR; and

(iii) the monitoring and operational conditions that would warrant a re-evaluation of the AOR prior to the next scheduled re-evaluation; and

(C) a corrective action plan that describes:

(i) how the corrective action will be conducted;

(ii) how corrective action will be adjusted if there are changes in the AOR;

(iii) if a phased corrective action is planned, how the phasing will be determined; and

(iv) how site access will be secured for future corrective action.

(e) Injection well construction.

(1) Criteria for construction of anthropogenic CO_2 injection wells. This paragraph establishes the criteria for the information about the construction and casing and cementing of, and special equipment for, anthropogenic CO_2 injection wells that an applicant must include in an application.

(A) General. The operator of a geologic storage facility must ensure that all anthropogenic CO_2 injection wells are constructed and completed in a manner that will:

(i) prevent the movement of injected CO_2 or displaced formation fluids into any unauthorized zones or into any areas where they could endanger USDWs;

(ii) allow the use of appropriate testing devices and workover tools; and

(iii) allow continuous monitoring of the annulus space between the injection tubing and long string casing.

(B) Casing and cementing of anthropogenic CO_2 injection wells.

(i) The operator must ensure that injection wells are cased and the casing cemented in compliance with §3.13 of this title (relating to Casing, Cementing, Drilling, Well Control, and Completion Requirements), in addition to the requirements of this section.

(ii) Casing, cement, cement additives, and/or other materials used in the construction of each injection well must have sufficient structural strength and must be of sufficient quality and quantity to maintain integrity over the design life of the injection well. All well materials must be suitable for use with fluids with which the well materials may be expected to come into contact and must meet or exceed test standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards as approved by the director.

(iii) Surface casing must extend through the base of the lowermost USDW above the injection zone and must be cemented to the surface.

(iv) Circulation of cement may be accomplished by staging. The director may approve an alternative method of cementing in cases where the cement cannot be circulated to the surface, provided the applicant can demonstrate by using logs that the cement does not allow fluid movement between the casing and the well bore.

(v) At least one long string casing, using a sufficient number of centralizers, must extend from the surface to the injection zone and must be cemented by circulating cement to the surface in one or more stages. The long string casing must isolate the injection zone and other intervals as necessary for the protection of USDWs and to ensure confinement of the injected and formation fluids to the permitted injection zone using cement and/or other isolation techniques. If the long string casing does not extend through the injection zone, another well string or liner must be cemented through the injection zone (for example, a chrome liner).

(vi) The applicant must verify the integrity and location of the cement using technology capable of radial evaluation of cement quality and identification of the location of channels to ensure that USDWs will not be endangered.

(vii) The director may exempt existing Class II wells that have been associated with injection of CO_2 for the purpose of enhanced recovery, Class V experimental technology wells, and stratigraphic test wells from provisions of these casing and cementing requirements if the applicant demonstrates that the well construction meets the general performance criteria in subparagraph (A) of this paragraph. A converted well must meet all other requirements under this section. The demonstration must include the following:

(I) as-built schematics and construction procedures to demonstrate that repermitting is appropriate;

(II) recent or newly conducted well-log information and mechanical integrity test results;

(III) a demonstration that any needed remedial actions have been performed;

(IV) a demonstration that the well was engineered and constructed to meet the requirements of subparagraph (A) of this paragraph and ensure protection of USDWs;

(V) a demonstration that cement placement and materials are appropriate for CO_2 injection for geologic storage;

(VI) a demonstration that the well has, and is able to maintain, internal and external mechanical integrity over the life of the project; and

(VII) the results of any additional testing of the well to support a demonstration of suitability for geologic storage.

(C) Special equipment.

(i) Tubing and packer. All injection wells must inject fluids through tubing set on a packer. Packers must be set no higher than 100 feet above the top of the permitted injection interval or at a location approved by the director.

(ii) Pressure observation valve. The wellhead of each injection well must be equipped with a pressure observation valve on the tubing and each annulus of the well.

(2) Construction information. The applicant must provide the following information for each well to allow the director to determine whether the proposed well construction and completion design will meet the general performance criteria in paragraph (1) of this subsection:

(A) depth to the injection zone;

(B) hole size;

(C) size and grade of all casing and tubing strings (e.g., wall thickness, external diameter, nominal weight, length, joint specification and construction material, tubing tensile, burst, and collapse strengths);

(D) proposed injection rate (intermittent or continuous), maximum proposed surface injection pressure, external pressure, internal pressure, axial loading, and maximum proposed volume and [~~and/or~~] mass of the CO_2 stream to be injected;

(E) type of packer and packer setting depth;

(F) a description of the capability of the materials to withstand corrosion when exposed to a combination of the CO_2 stream and formation fluids;

(G) down-hole temperatures and pressures;

(H) lithology of injection and confining zones;

(I) type or grade of cement and additives;

(J) chemical composition and temperature of the CO_2 stream; and

(K) schematic drawings of the surface and subsurface construction details.

(3) Well construction plan. The applicant must submit an injection well construction plan that meets the criteria in paragraph (1) of this subsection.

(4) Well stimulation plan. The applicant must submit[~~, as applicable,~~] a description of the proposed well stimulation program, including a description of the stimulation fluids, and a determination that well stimulation will not compromise containment.

(f) Plan for logging, sampling, and testing of injection wells [~~after permitting but~~] before injection. The applicant must submit a plan for logging, sampling, and testing of each injection well [~~after permitting but~~] prior to injection well operation. The plan need not include identical logging, sampling, and testing procedures for all wells provided there is a reasonable basis for different procedures. Such plan is not necessary for existing wells being converted to anthropogenic CO_2 injection wells in accordance with this subchapter, to the extent such activities already have taken place. The plan must describe the logs, surveys, and tests to be conducted to verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in, the formations that are to be used for monitoring, storage, and confinement to assure conformance with the injection well construction requirements set forth in subsection (e) of this section, and to establish accurate baseline data against which future measurements may be compared. The plan must meet the following criteria and must include the following information.

(1) Logs and surveys of newly drilled and completed injection wells.

(A) During the drilling of any hole that is constructed by drilling a pilot hole that is enlarged by reaming or another method, the operator must perform deviation checks at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.

(B) Before surface casing is installed, the operator must run appropriate logs, such as resistivity, spontaneous potential, and caliper logs.

(C) After each casing string is set and cemented, the operator must run logs, such as a cement bond log, variable density log, and a temperature log, to ensure proper cementing.

(D) Before long string casing is installed, the operator must run logs appropriate to the geology, such as resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs, to gather data necessary to verify the characterization of the geology and hydrology.

(2) Testing and determination of hydrogeologic characteristics of injection and confining zone.

(A) Prior to operation, the operator must conduct tests to verify hydrogeologic characteristics of the injection zone.

(B) The operator must perform an initial pressure falloff or other test and submit to the director a written report of the results of the test, including details of the methods used to perform the test and to interpret the results, all necessary graphs, and the testing log, to verify permeability, injectivity, and initial pressure using water or CO_2.

(C) The operator must determine or calculate the fracture pressures for the injection and confining zone. The Commission will include in any permit it might issue a limit of 90% of the fracture pressure to ensure that the injection pressure does not exceed the fracture pressure of the injection zone.

(3) Sampling.

(A) The operator must record and submit the formation fluid temperature, pH, and conductivity, the reservoir pressure, and the static fluid level of the injection zone.

(B) The operator must take [~~submit analyses of~~] whole cores or sidewall cores representative of the injection zone and con-

fining zone and formation fluid samples from the injection zone. The director may accept data from cores and formation fluid samples from nearby wells or other data if the operator can demonstrate to the director that such data are representative of conditions at the proposed injection well. The operator must submit to the director a detailed report prepared by a log analyst that includes well log analyses (including well logs), core analyses, and formation fluid sample information. The director may require the operator to core other formations in the borehole.

(g) Compatibility determination. Based on the results of the formation testing program required by subsection (f) of this section, the applicant must submit a determination of the compatibility of the CO_2 stream with:

(1) the materials to be used to construct the well;

(2) fluids in the injection zone; and

(3) minerals in both the injection and the confining zone.

(h) Mechanical integrity testing.

(1) Criteria. This paragraph establishes the criteria for the mechanical integrity testing plan for anthropogenic CO_2 injection wells that an applicant must include in an application.

(A) Other than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator must maintain mechanical integrity of the injection well at all times.

(B) Before beginning injection operations and at least once every five years thereafter, the operator must demonstrate internal mechanical integrity for each injection well by pressure testing the tubing-casing annulus.

(C) Following an initial annulus pressure test, the operator must continuously monitor injection pressure, rate, temperature, injected volumes and mass, and pressure on the annulus between tubing and long string casing to confirm that the injected fluids are confined to the injection zone. If mass is determined using volume, the operator must provide calculations.

(D) At least once per year until the injection well is plugged, the operator must confirm the absence of significant fluid movement into a USDW through channels adjacent to the injection wellbore (external integrity) using a method approved by the director (e.g., diagnostic surveys such as oxygen-activation logging or temperature or noise logs).

(E) The operator must test injection wells after any workover that disturbs the seal between the tubing, packer, and casing in a manner that verifies internal mechanical integrity of the tubing and long string casing.

(F) An operator must either repair and successfully retest or plug a well that fails a mechanical integrity test.

(2) Mechanical integrity testing plan. The applicant must prepare and submit a mechanical integrity testing plan as part of a permit application. The performance tests must be designed to demonstrate the internal and external mechanical integrity of each injection well. These tests may include:

(A) a pressure test with liquid or inert gas;

(B) a tracer survey such as oxygen-activation logging;

(C) a temperature or noise log;

(D) a casing inspection log; and/or

(E) any alternative method approved by the director, and if necessary by the Administrator of EPA under 40 CFR §146.89(e), that provides equivalent or better information approved by the director.

(i) Operating information.

(1) Operating plan. The applicant must submit a plan for operating the injection wells and the geologic storage facility that complies with the criteria set forth in §5.206(d) of this title, and that outlines the steps necessary to conduct injection operations. The applicant must include the following proposed operating data in the plan:

(A) the average and maximum daily injection rates, temperature, and volumes and/or mass of the CO_2 stream;

(B) the average and maximum surface injection pressure;

(C) the sources of the CO_2 stream and the volume and/or mass of CO_2 from each source; and

(D) an analysis of the chemical and physical characteristics of the CO_2 stream prior to injection.

(2) Maximum injection pressure. The director will approve a maximum injection pressure limit that:

(A) considers the risks of tensile failure and, where appropriate, geomechanical or other studies that assess the risk of tensile failure and shear failure;

(B) with a reasonable degree of certainty will avoid initiation or propagation of fractures in the confining zone or cause otherwise non-transmissive faults transecting the confining zone to become transmissive; and

(C) in no case may cause the movement of injection fluids or formation fluids in a manner that endangers USDWs.

(j) Plan for monitoring, sampling, and testing after initiation of operation.

(1) The applicant must submit a monitoring, sampling, and testing plan for verifying that the geologic storage facility is operating as permitted and that the injected fluids are confined to the injection zone.

(2) The plan must include the following:

(A) the analysis of the CO_2 stream prior to injection with sufficient frequency to yield data representative of its chemical and physical characteristics;

(B) the installation and use of continuous recording devices to monitor injection pressure, rate, temperature, and volume and/or mass, and the pressure on the annulus between the tubing and the long string casing, except during workovers;

(C) after initiation of injection, the performance on a quarterly [~~semi-annual~~] basis of corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion to ensure that the well components meet the minimum standards for material strength and performance set forth in subsection (e)(1)(A) of this section. The operator must report the results of such monitoring semi-annually [~~annually~~]. Corrosion monitoring may be accomplished by:

(i) analyzing coupons of the well construction materials in contact with the CO_2 stream;

(ii) routing the CO_2 stream through a loop constructed with the materials used in the well and inspecting the materials in the loop; or

(iii) using an alternative method, materials, or time period approved by the director;

(D) monitoring of geochemical and geophysical changes, including:

(i) periodic sampling of the fluid temperature, pH, conductivity, reservoir pressure and static fluid level of the injection zone and monitoring for pressure changes, and for changes in geochemistry, in a permeable and porous formation near to and above the top confining zone;

(ii) periodic monitoring of the quality and geochemistry of a USDW within the AOR and the formation fluid in a permeable and porous formation near to and above the top confining zone to detect any movement of the injected CO_2 through the confining zone into that monitored formation;

(iii) the location and number of monitoring wells justified on the basis of the AOR, injection rate and volume, geology, and the presence of artificial penetrations and other factors specific to the geologic storage facility; and

(iv) the monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data collected under subsection (c)(2) of this section and any modeling results in the AOR evaluation;

(E) tracking the extent of the CO_2 plume and the position of the pressure front by using indirect, geophysical techniques, which may include seismic, electrical, gravity, or electromagnetic surveys and/or down-hole CO_2 detection tools;

(F) a demonstration of external mechanical integrity pursuant to subsection (h)(2) of this section at least once per year until the injection well is plugged, and, if required by the director, a casing inspection log pursuant to requirements in subsection (h)(2) of this section at a frequency established in the testing and monitoring plan;

(G) [~~(F)~~] a [~~A~~] pressure fall-off test at least once every five years unless more frequent testing is required by the director based on site-specific information; and

(H) [~~(G)~~] additional monitoring as the director may determine to be necessary to support, upgrade, and improve computational modeling of the AOR evaluation and to determine compliance with the requirements that the injection activity not allow the movement of fluid containing any contaminant into USDWs and that the injected fluid remain within the permitted interval.

(k) Well plugging plan. The applicant must submit a well plugging plan for all injection wells and monitoring wells that penetrate the base of usable quality water that includes the following:

(1) a proposal for plugging all monitoring wells that penetrate the base of usable quality water and all injection wells upon abandonment in accordance with §3.14 of this title (relating to Plugging), in addition to the requirements of this section. The proposal must include:

(A) the type and number of plugs to be used;

(B) the placement of each plug, including the elevation of the top and bottom of each plug;

(C) the type, grade, and quantity of material to be used in plugging and information to demonstrate that the material is compatible with the CO_2 stream; and

(D) the method of placement of the plugs;

(2) proposals for activities to be undertaken prior to plugging an injection well, specifically:

(A) flushing each injection well with a buffer fluid;

(B) performing tests or measures to determine bottomhole reservoir pressure;

(C) performing final tests to assess mechanical integrity; and

(D) ensuring that the material to be used in plugging must be compatible with the CO_2 stream and the formation fluids;

(3) a proposal for giving notice of intent to plug monitoring wells that penetrate the base of usable quality water and all injection wells. The applicant's plan must ensure that:

(A) the operator notifies the director at least 60 days before plugging a well. At this time, if any changes have been made to the original well plugging plan, the operator must also provide a revised well plugging plan. At the discretion of the director, an operator may be allowed to proceed with well plugging on a shorter notice period; and

(B) the operator will file a notice of intention to plug and abandon (Form W-3A) a well with the appropriate Commission district office and the division in Austin at least five days prior to the beginning of plugging operations;

(4) a plugging report for monitoring wells that penetrate the base of usable quality water and all injection wells. The applicant's plan must ensure that within 30 days after plugging the operator will file a complete well plugging record (Form W-3) in duplicate with the appropriate district office. The operator and the person who performed the plugging operation (if other than the operator) must certify the report as accurate;

(5) a plan for plugging all monitoring wells that do not penetrate the base of usable quality water in accordance with 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers); and

(6) a plan for certifying that all monitoring wells that do not penetrate the base of usable quality water will be plugged in accordance with 16 TAC Chapter 76.

(l) Emergency and remedial response plan. The applicant must submit an emergency and remedial response plan that:

(1) accounts for the entire AOR, regardless of whether or not corrective action in the AOR is phased;

(2) describes actions to be taken to address escape from the permitted injection interval or movement of the injection fluids or formation fluids that may cause an endangerment to USDWs during construction, operation, closure, and post-closure periods;

(3) includes a safety plan that includes:

(A) emergency response procedures;

(B) provisions to provide security against unauthorized activity;

(C) CO_2 release detection and prevention measures;

(D) instructions and procedures for alerting the general public and public safety personnel of the existence of an emergency;

(E) procedures for requesting assistance and for follow-up action to remove the public from an area of exposure;

(F) provisions for advance briefing of the public within the AOR on subjects such as the hazards and characteristics of CO_2,

(G) the manner in which the public will be notified of an emergency and steps to be taken in case of an emergency; and

(H) if necessary, proposed actions designed to minimize and respond to risks associated with potential seismic events, including seismic monitoring; and

(4) includes a description of the training and testing that will be provided to each employee at the storage facility on operational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The operator must train all employees before commencing injection and storage operations at the facility. The operator must train each subsequently hired employee before that employee commences work at the storage facility. The operator must hold a safety meeting with each contractor prior to the commencement of any new contract work at a storage facility. Emergency measures specific to the contractor's work must be explained in the contractor safety meeting. Training schedules, training dates, and course outlines must be provided to Commission personnel upon request for the purpose of Commission review to determine compliance with this paragraph.

(m) Post-injection storage facility care and closure plan. The applicant must submit a post-injection storage facility care and closure plan. The plan must include:

(1) a demonstration containing substantial evidence that the geologic storage project will no longer pose a risk of endangerment to USDWs at the end of the post-injection storage facility care timeframe. The demonstration must be based on significant, site-specific data and information, including all data and information collected pursuant subsections (b)-(d) of this section and §5.206(b)(5) of this title;

(2) the pressure differential between pre-injection and predicted post-injection pressures in the injection zone;

(3) the predicted position of the CO_2 plume and associated pressure front at closure as demonstrated in the AOR evaluation required under subsection (d) of this section;

(4) a description of the proposed post-injection monitoring location, methods, and frequency;

(5) a proposed schedule for submitting post-injection storage facility care monitoring results to the director;

(6) the estimated cost of proposed post-injection storage facility care and closure; and

(7) consideration and documentation of:

(A) the results of computational modeling performed pursuant to delineation of the AOR under subsection (d) of this section;

(B) the predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs, and/or the timeframe for pressure decline to pre-injection pressures;

(C) the predicted rate of CO_2 plume migration within the injection zone, and the predicted timeframe for the stabilization of the CO_2 plume and associated pressure front;

(D) a description of the site-specific processes that will result in CO_2 trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;

(E) the predicted rate of CO_2 trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;

(F) the results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subparagraphs (D) and (E) of this paragraph;

(G) a characterization of the confining zone(s) including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid (e.g., CO_2, formation fluids) movement;

(H) the presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic storage project or any other projects in proximity to the predicted/modeled, final extent of the CO_2 plume and area of elevated pressure;

(I) a description of the well construction and an assessment of the quality of plugs of all abandoned wells within the AOR;

(J) the distance between the injection zone and the nearest USDWs above and/or below the injection zone; and

(K) any additional site-specific factors required by the director; and

(8) information submitted to support the demonstration in paragraph (1) of this subsection, which shall meet the following criteria:

(A) all analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;

(B) estimation techniques must be appropriate and EPA-certified test protocols must be used where available;

(C) predictive models must be appropriate and tailored to the site conditions, composition of the CO_2 stream, and injection and site conditions over the life of the geologic storage project;

(D) predictive models must be calibrated using existing information (e.g., at Class I, Class II, or Class V experimental technology well sites) where sufficient data are available;

(E) reasonably conservative values and modeling assumptions must be used and disclosed to the director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;

(F) an analysis must be performed to identify and assess aspects of the alternative post-injection storage facility care [~~PISC~~] timeframe demonstration that contribute significantly to uncertainty. The operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;

(G) an approved quality assurance and quality control plan must address all aspects of the demonstration; and

(H) any additional criteria required by the director.

(n) Fees, financial responsibility, and financial assurance. The applicant must pay the fees, demonstrate that it has met the financial responsibility requirements, and provide the Commission with financial assurance as required under §5.205 of this title (relating to Fees, Financial Responsibility, and Financial Assurance).

(1) The applicant must demonstrate financial responsibility [~~and resources~~] for corrective action, injection well plugging, post-injection storage facility care and storage facility closure, and emergency and remedial response until the director has provided to the operator a

written verification that the director has determined that the facility has reached the end of the post-injection storage facility care period.

(2) In determining whether the applicant is financially responsible, the director must rely on the following:

(A) the person's most recent audited annual report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)). The date of the audit may not be more than one year before the date of submission of the application to the division; and

(B) the person's most recent quarterly report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(C) if the person is not required to file such a report, the person's most recent audited financial statement. The date of the audit must not be more than one year before the date of submission of the application to the division.

(o) Letter from the Groundwater Advisory Unit of the Oil and Gas Division. The applicant must submit a letter from the Groundwater Advisory Unit of the Oil and Gas Division in accordance with Texas Water Code, §27.046.

(p) Other information. The applicant must submit any other information requested by the director as necessary to discharge the Commission's duties under Texas Water Code, Chapter 27, Subchapter B-1, or deemed necessary by the director to clarify, explain, and support the required attachments.

§5.204. Notice of Permit Actions and Public Comment Period.

(a) Notice requirements.

(1) The Commission shall give notice of the following actions:

(A) a draft permit has been prepared under §5.202(e) of this title (relating to Permit Required, and Draft Permit and Fact Sheet); and

(B) a hearing [~~that~~] has been scheduled under subsection (b)(2) of this section.

(2) General notice by publication. The Commission shall publish notice of a draft permit once a week for three consecutive weeks in a newspaper of general circulation in each county where the storage facility is located or is to be located. The Commission shall also post notice of a draft permit on the Commission's website.

(3) Methods of notification. The Commission shall give notice by the following methods:

(A) Individual notice. Notice of a draft permit or a public hearing shall be given by mailing a copy of the notice to the following persons:

(i) the applicant;

(ii) the United States Environmental Protection Agency;

(iii) the Texas Commission on Environmental Quality, the Texas Water Development Board, the Texas Department of State Health Services, the Texas Parks and Wildlife Department, the Texas General Land Office, the Texas Historical Commission, the United States Fish and Wildlife Service, other Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, and coastal zone management plans, the Advisory Council on Historic Preservation, including any affected States (Indian Tribes) and any agency that the Commission knows has issued or is required to issue a permit for the same facility under any federal or state environmental program;

(iv) each adjoining mineral interest owner, other than the applicant, of the outermost boundary of the proposed geologic storage facility;

(v) each leaseholder and interest owner of minerals lying above or below the proposed geologic storage facility;

(vi) each adjoining leaseholder of minerals offsetting the outermost boundary of the proposed geologic storage facility;

(vii) each owner or leaseholder of any portion of the surface overlying the proposed geologic storage facility and the adjoining area of the outermost boundary of the proposed geologic storage facility;

(viii) the clerk of the county or counties where the proposed geologic storage facility is located or is proposed to be located;

(ix) the city clerk or other appropriate city official where the proposed geologic storage facility is located within city limits;

(x) any other unit of local government having jurisdiction over the area where the geologic storage facility is or is proposed to be located, and each state agency having any authority under state law with respect to the construction or operation of the geologic storage facility;

(xi) any State, Tribe, or Territory any portion of which is within the AOR of the Class VI project;

(xii) [~~(xi)~~] persons on the mailing list developed by the Commission, including those who request in writing to be on the list and by soliciting participants in public hearings in that area for their interest in being included on area mailing lists; and

(xiii) [~~(xii)~~] any other class of persons that the director determines should receive notice of the application.

(B) Any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice of a draft permit under this subsection.

(4) Content of notice. Individual notice must consist of:

(A) the applicant's intention to construct and operate an anthropogenic CO_2 geologic storage facility;

(B) a description of the geologic storage facility location;

(C) a copy of any draft permit and fact sheet;

(D) each physical location and the internet address at which a copy of the application may be inspected;

(E) a statement that:

(i) affected persons may protest the application;

(ii) protests must be filed in writing and must be mailed or delivered to Technical Permitting, Oil and Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711; and

(iii) protests must be received by the director within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later; and

(F) information satisfying the requirements of 40 CFR §124.10(d)(1).

(5) Individual notice by publication. The applicant must make diligent efforts to ascertain the name and address of each person identified under paragraph (3)(A) of this subsection. The exercise of diligent efforts to ascertain the names and addresses of such persons requires an examination of county records where the facility is located and an investigation of any other information that is publicly and/or reasonably available to the applicant. If, after diligent efforts, an applicant has been unable to ascertain the name and address of one or more persons required to be notified under paragraph (3)(A) of this subsection, the applicant satisfies the notice requirements for those persons by the publication of the notice of application as required in paragraph (2) of this subsection. The applicant must submit an affidavit to the director specifying the efforts that the applicant took to identify each person whose name and/or address could not be ascertained.

(6) Notice to certain communities. The applicant shall identify whether any portions of the AOR encompass an Environmental Justice (EJ) or Limited English-Speaking Household community using the most recent U.S. Census Bureau American Community Survey data. If the AOR incudes an EJ or Limited English-Speaking Household community, the applicant shall conduct enhanced public outreach activities to these communities. Efforts to include EJ and Limited English-Speaking Household communities in public involvement activities in such cases shall include:

(A) published meeting notice in English and the identified language (e.g., Spanish);

(B) comment forms posted on the applicant's webpage and available at public meeting in English and the alternate language;

(C) interpretation services accommodated upon request;

(D) English translation of any comments made during any comment period in the alternate language; and

(E) to the extent possible, public meeting venues near public transportation.

(7) Comment period for a draft permit. Public notice of a draft permit, including a notice of intent to deny a permit application, shall allow at least 30 days for public comment.

(b) Public comment and hearing requirements.

(1) Public comment.

(A) During the public comment period, any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled.

(B) Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.

(C) The public comment period shall automatically be extended to the close of any public hearing under this section. The hearing examiner may also extend the comment period by so stating at the hearing.

(2) Public hearing.

(A) If the Commission receives a protest regarding an application for a new permit or for an amendment of an existing permit for a geologic storage facility from a person notified pursuant to subsection (a) of this section or from any other affected person within 30 days of the date of receipt of the application by the division, receipt of individual notice, or last publication of notice, whichever is later, then the director will notify the applicant that the director cannot administratively approve the application. Upon the written request of the applicant, the director will schedule a hearing on the application.

(B) The director shall hold a public hearing whenever the director finds, on the basis of requests, a significant degree of public interest in a draft permit.

(C) The director may also hold a public hearing at the director's discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(D) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of a hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(E) Upon the written request of the applicant, the Commission must give notice of a hearing to all affected persons, local governments, and other persons who express, in writing, an interest in the application. After the hearing, the examiner will recommend a final action by the Commission. Notices shall include information satisfying the requirements of 40 CFR §124.10(d)(2) and the Texas Government Code, §2001.052.

(3) If the Commission receives no protest regarding an application for a new permit or for the amendment of an existing permit for a geologic storage facility from a person notified pursuant to subsection (a) of this section or from any other affected person, the director may administratively approve the application.

(4) If the director administratively denies an application for a new permit or for the amendment of an existing permit for a geologic storage facility, upon the written request of the applicant, the director will schedule a hearing. After hearing, the examiner will recommend a final action by the Commission.

(5) Upon making a final permit decision, the director shall issue a response to comments. The response shall specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change, and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The Commission shall post the response to comments on the Commission's internet website.

§5.205. Fees, Financial Responsibility, and Financial Assurance.

(a) Fees. In addition to the fee for each injection well required by §3.78 of this title (relating to Fees and Financial Security Requirements), the following non-refundable fees must be remitted to the Commission with the application:

(1) Base application fee.

(A) The applicant must pay to the Commission an application fee of $50,000 for each permit application for a geologic storage facility.

(B) The applicant must pay to the Commission an application fee of $25,000 for each application to amend a permit for a geologic storage facility.

(2) Injection fee. The operator must pay to the Commission an annual fee of $0.025 per metric ton of CO_2 injected into the geologic storage facility.

(3) Post-injection care fee. The operator must pay to the Commission an annual fee of $50,000 each year the operator does not inject into the geologic storage facility until the director has authorized storage facility closure.

(b) Financial responsibility.

(1) A person to whom a permit is issued under this subchapter must provide annually to the director evidence of financial responsibility that is satisfactory to the director. The operator must demonstrate and maintain financial responsibility [~~and resources~~] for corrective action, injection well plugging, post-injection storage facility care and storage facility closure, and emergency and remedial response until the director has provided written verification that the director has determined that the facility has reached the end of the post-injection storage facility care period.

(2) In determining whether the person is financially responsible, the director must rely on:

(A) the person's most recent audited annual report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); and

(B) the person's most recent quarterly report filed with the U. S. Securities and Exchange Commission under Section 13 or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m or 78o(d)); or

(C) if the person is not required to file such a report, the person's most recent audited financial statement. The date of the audit must not be more than one year before the date of submission of the application to the director.

(3) The applicant's demonstration of financial responsibility must account for the entire AOR, regardless of whether corrective action in the AOR is phased.

(c) Financial assurance. The director shall consider and approve the applicant's demonstration of financial responsibility for all the phases of the geologic sequestration project, including the post-injection storage facility care and closure phase and the plugging phase, prior to issuance of a geologic storage injection well permit.

(1) Injection and monitoring wells. The operator must comply with the requirements of §3.78 of this title for all monitoring wells that penetrate the base of usable quality water and this subsection for all injection wells.

(2) Geologic storage facility.

(A) The applicant must include in an application for a geologic storage facility permit:

(i) a written estimate of the highest likely dollar amount necessary to perform post-injection monitoring and closure of the facility, including plugging of all wells, that shows all assumptions and calculations used to develop the estimate;

(ii) a copy of the form of the bond or letter of credit that will be filed with the Commission; and

(iii) information concerning the issuer of the bond or letter of credit including the issuer's name and address and evidence of authority to issue bonds or letters of credit in Texas.

(B) A geologic storage facility shall not receive CO_2 until a bond or letter of credit in an amount approved by the director under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with and approved by the director.

(C) The determination of the amount of financial assurance for a geologic storage facility is subject to the following requirements:

(i) The director must approve the dollar amount of the financial assurance. The amount of financial assurance required to be filed under this subsection must be equal to or greater than the maximum amount necessary to perform corrective action, emergency response, and remedial action, post-injection monitoring and site care, and closure of the geologic storage facility, including plugging of wells, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit. The cost estimate must be performed for each phase separately and must be based on the costs to the Commission of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator;

(ii) A qualified professional engineer licensed by the State of Texas, as required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, must prepare or supervise the preparation of a written estimate of the highest likely amount necessary to close the geologic storage facility. The operator must submit to the director the written estimate under seal of a qualified licensed professional engineer, as required under Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act; and

(iii) The Commission may use the proceeds of financial assurance filed under this subsection to pay the costs of plugging any well or wells at the facility if the financial assurance for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(D) Bonds and letters of credit filed in satisfaction of the financial assurance requirements for a geologic storage facility must comply with the following standards as to issuer and form.

(i) The issuer of any geologic storage facility bond filed in satisfaction of the requirements of this subsection must be a corporate surety authorized to do business in Texas. The form of bond filed under this subsection must provide that the bond be renewed and continued in effect until the conditions of the bond have been met or its release is authorized by the director.

(ii) Any letter of credit filed in satisfaction of the requirements of this subsection must be issued by and drawn on a bank authorized under state or federal law to operate in Texas. The letter of credit must be an irrevocable, standby letter of credit subject to the requirements of Texas Business and Commerce Code, §§5.101 - 5.118. The letter of credit must provide that it will be renewed and continued in effect until the conditions of the letter of credit have been met or its release is authorized by the director.

(iii) The qualifying financial responsibility instruments must comprise protective conditions of coverage. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument; and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(I) Cancellation. An operator must provide that its financial instrument may not cancel, terminate, or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the operator and the director. The cancellation must not be final until at least 120 days after the Commission receives the cancellation notice. The operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable or possible, any funds from the instrument being cancelled must be released within 60 days of notification by the director.

(II) Renewal. If a financial instrument expires, the operator must renew the financial instrument for the entire term of the geologic storage project. The instrument may be automatically renewed as long as the operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

(III) Financial instrument to remain in effect. Cancellation, termination, or failure to renew shall not occur and the financial instrument shall remain in full force and effect if on or before the date of expiration:

(-a-) the director deems the facility abandoned;

(-b-) the permit is terminated or revoked or a new permit is denied;

(-c-) closure is ordered by the director or a United States district court or other court of competent jurisdiction;

(-d-) the operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(-e-) the amount due is paid.

(E) During the active life of the geologic storage project, the operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with paragraph (2)(C)(i) of this subsection and provide this adjustment to the director. The operator must also provide to the director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and remedial response plan.

(F) [~~(E)~~] The operator of a geologic storage facility must provide to the director, and the director must approve, annual written updates of the cost estimate to increase or decrease the cost estimate to account for any changes to the AOR and corrective action plan, the emergency response and remedial action plan, the injection well plugging plan, and the post-injection storage facility care and closure plan. The Director must approve any decrease or increase to the initial cost estimate. During the active life of the geologic storage project, the operator must revise the cost estimate no later than 60 days after the director has approved the request to modify the AOR and corrective action plan, the injection well plugging plan, the post-injection storage facility care and closure plan, and the emergency and response plan, if a change in any of these plans increases the cost. If a change to a plan decreases the cost, any withdrawal of funds must be approved by the director. Any decrease to the value of a financial assurance instrument must first be approved by the director. The revised cost estimate must be adjusted for inflation as specified at paragraph (2)(E) of this subsection. The operator must provide to the director, within 60 days of notification by the director, [~~upon request~~] an adjustment of the cost estimate if the director determines during the annual evaluation of the qualifying financial responsibility instruments that the most recent [~~has reason to believe that the original~~] demonstration is no longer adequate to cover the cost of corrective action, injection well plugging and post-injection storage facility care and closure, and emergency and remedial response.

(G) Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the director or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the operator has received written approval from the director.

(H) The requirement to maintain adequate financial responsibility is directly enforceable regardless of whether the requirement is a condition of the permit.

(i) The operator must maintain financial responsibility until:

(I) the director receives and approves the completed post-injection storage facility care and closure plan; and

(II) the director approves storage facility closure.

(ii) The operator may be released from a financial instrument in the following circumstances:

(I) The operator has completed the phase of the geologic storage project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the director, including obtaining financial responsibility for the next phase of the geologic storage project, if required; or

(II) The operator has submitted a replacement financial instrument and received written approval from the director accepting the new financial instrument and releasing the operator from the previous financial instrument.

(3) The director may consider allowing the phasing in of financial assurance for only corrective action based on project-specific factors.

(4) The director may approve a reduction in the amount of financial assurance required for post-injection monitoring and/or corrective action based on project-specific monitoring results.

(5) The operator must maintain the required financial responsibility regardless of the status of the director's review of the financial responsibility demonstration.

(d) Notice of adverse financial conditions.

(1) The operator must notify the Commission of adverse financial conditions that may affect the operator's ability to carry out injection well plugging and post-injection storage facility care and closure. An operator must file any notice of bankruptcy in accordance with §3.1(f) of this title (relating to Organization Report; Retention of Records; Notice Requirements). The operator must give such notice by certified mail.

(2) The operator filing a bond must ensure that the bond provides a mechanism for the bond or surety company to give prompt notice to the Commission and the operator of any action filed alleging insolvency or bankruptcy of the surety company or the bank or alleging any violation that would result in suspension or revocation of the surety or bank's charter or license to do business.

(3) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency or suspension, or revocation of its charter or license, the Commission must deem the operator to be without bond coverage. The Commission must issue a notice to any operator who is without bond coverage and must specify a reasonable period to replace bond coverage, not to exceed 60 days.

§5.206. Permit Standards.

(a) General permit conditions.

(1) Each condition applicable to a permit shall be incorporated into the permit either expressly or by reference. If incorporated

by reference, a specific citation to the rules in this chapter shall be given in the permit. The requirements listed in this section are directly enforceable regardless of whether the requirement is a condition of the permit.

(2) The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(b) General criteria. The director may issue a permit under this subchapter if the applicant demonstrates and the director finds that:

(1) the injection and geologic storage of anthropogenic CO_2 will not endanger or injure any existing or prospective oil, gas, geothermal, or other mineral resource, or cause waste as defined by Texas Natural Resources Code, §85.046(11);

(2) with proper safeguards, both USDWs and surface water can be adequately protected from CO_2 migration or displaced formation fluids;

(3) the injection of anthropogenic CO_2 will not endanger or injure human health and safety;

(4) the construction, operation, maintenance, conversion, plugging, abandonment, or any other injection activity does not allow the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons;

(5) [~~(4)~~] the reservoir into which the anthropogenic CO_2 is injected is suitable for or capable of being made suitable for protecting against the escape or migration of anthropogenic CO_2 from the storage reservoir;

(6) [~~(5)~~] the geologic storage facility will be sited in an area with suitable geology, which at a minimum must include:

(A) an injection zone of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the CO_2 stream; and

(B) a confining zone that is laterally continuous and free of known transecting transmissive faults or fractures over an area sufficient to contain the injected CO_2 stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without compromising the confining zone or causing the movement of fluids that endangers USDWs;

(7) [~~(6)~~] the applicant for the permit meets all of the other statutory and regulatory requirements for the issuance of the permit;

(8) [~~(7)~~] the applicant has provided a letter from the Groundwater Advisory Unit of the Oil and Gas Division in accordance with §5.203(o) of this title (relating to Application Requirements);

(9) [~~(8)~~] the applicant has provided a letter of determination from TCEQ concluding that drilling and operating an anthropogenic CO_2 injection well for geologic storage or constructing or operating a geologic storage facility will not impact or interfere with any previous or existing Class I injection well, including any associated waste plume, or any other injection well authorized or permitted by TCEQ;

(10) [~~(9)~~] the applicant has provided a signed statement that the applicant has a good faith claim to the necessary and sufficient property rights for construction and operation of the geologic storage facility for at least the first five years after initiation of injection in accordance with §5.203(d)(1)(A) of this title;

(11) [~~(10)~~] the applicant has paid the fees required in §5.205(a) of this title (relating to Fees, Financial Responsibility, and Financial Assurance);

(12) [~~(11)~~] the director has determined that the applicant has sufficiently demonstrated financial responsibility as required in §5.205(b) of this title; and

(13) [~~(12)~~] the applicant submitted to the director financial assurance in accordance with §5.205(c) of this title.

(c) Permit conditions for injection [~~Injection~~] well construction.

(1) Construction of anthropogenic CO_2 injection wells must meet the criteria in §5.203(e) of this title.

(2) Within 30 days after the completion or conversion of an injection well subject to this subchapter, the operator must file with the division a complete record of the well on Commission Form W-2, Oil Well Potential Test, Completion or Recompletion Report and Log [~~the appropriate form~~] showing the current completion.

(3) Except in the case of an emergency repair, the operator of a geologic storage facility must notify the director in writing at least 30 days prior to conducting any well workover that involves running tubing and setting packers, beginning any workover or remedial operation, or conducting any required pressure tests or surveys. Such activities shall not commence before the end of the 30 days unless authorized by the director. In the case of an emergency repair, the operator must notify the director of such emergency repair as soon as reasonably practical.

(d) Permit conditions for operating [~~Operating~~] a geologic storage facility.

(1) Operating plan.

(A) The operator must maintain and comply with the approved operating plan.

(B) Prior to approval for the operation of a Class VI injection well, the operator shall submit, and the director shall consider, the following information:

(i) the final AOR based on modeling, using data obtained during logging and testing of the well and the formation as required by clauses (ii) - (viii) and (x) of this subparagraph;

(ii) any relevant updates, based on data obtained during logging and testing of the well and the formation as required by §5.203(f) of this title, to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of clauses (iii) - (vii), and (x) of this subparagraph;

(iii) information on the compatibility of the CO_2 stream with fluids in the injection zones and minerals in both the injection and the confining zones, based on the results of the formation testing program, and with the materials used to construct the well;

(iv) the results of the formation testing program required by §5.203(f) of this title;

(v) final injection well construction procedures that meet the requirements of §5.203(e) of this title;

(vi) the status of corrective action on wells in the AOR;

(vii) all available logging and testing program data on the well required by §5.203(f) of this title;

(viii) a demonstration of mechanical integrity pursuant to §5.203(h) of this title;

(ix) any updates to the proposed AOR and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection storage facility care and closure plan, or the emergency and remedial response plan submitted under §5.203(m) of this subchapter, which are necessary to address new information collected during logging and testing of the well and the formation as required by this section, and any updates to the alternative post-injection storage facility care timeframe demonstration submitted under §5.203(m) of this title, which are necessary to address new information collected during the logging and testing of the well and the formation as required by this section; and

(x) any other information requested by the director.

(2) Operating criteria.

(A) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(B) The total volume of CO_2 injected into the storage facility must be metered through a master meter or a series of master meters. The volume and/or mass of CO_2 injected into each injection well must be metered through an individual well meter. If mass is determined using volume, the operator must provide calculations.

(C) The operator must comply with a maximum surface injection pressure limit approved by the director and specified in the permit. In approving a maximum surface injection pressure limit, the director must consider the results of well tests and, where appropriate, geomechanical or other studies that assess the risks of tensile failure and shear failure. The director must approve limits that, with a reasonable degree of certainty, will avoid initiation or propagation of fractures in the confining zone or cause otherwise non-transmissive faults or fractures transecting the confining zone to become transmissive. In no case may injection pressure cause movement of injection fluids or formation fluids in a manner that endangers USDWs. The Commission shall include in any permit it might issue a limit of 90 percent of the fracture pressure to ensure that the injection pressure does not initiate new fractures or propagate existing fractures in the injection zone(s). In no case may injection pressure initiate fractures in the confining zone(s) or cause the movement of injection or formation fluids that endangers a USDW. The director may approve a plan for controlled artificial fracturing of the injection zone.

(D) The operator must fill the annulus between the tubing and the long string casing with a corrosion inhibiting fluid approved by the director. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the director determines that such requirement might harm the integrity of the well or endanger USDWs.

(E) The operator must install and use continuous recording devices to monitor the injection pressure, and the rate, volume, and temperature of the CO_2 stream. The operator must monitor the pressure on the annulus between the tubing and the long string casing. The operator must continuously record, continuously monitor, or control by a preset high-low pressure sensor switch the wellhead pressure of each injection well.

(F) The operator must comply with the following requirements for alarms and automatic shut-off systems.

(i) The operator must install and use alarms and automatic shut-off systems designed to alert the operator and shut-in the well when operating parameters such as annulus pressure, injection rate or other parameters diverge from permitted ranges and/or gradients. On offshore wells, the automatic shut-off systems must be installed down-hole.

(ii) If an automatic shutdown is triggered or a loss of mechanical integrity is discovered, the operator must immediately investigate and identify as expeditiously as possible the cause. If, upon investigation, the well appears to be lacking mechanical integrity, or if monitoring otherwise indicates that the well may be lacking mechanical integrity, the operator must:

(I) immediately cease injection;

(II) take all steps reasonably necessary to determine whether there may have been a release of the injected CO_2 stream into any unauthorized zone;

(III) notify the director as soon as practicable, but within 24 hours;

(IV) restore and demonstrate mechanical integrity to the satisfaction of the director prior to resuming injection; and

(V) notify the director when injection can be expected to resume.

(e) Permit conditions for monitoring [~~Monitoring~~], sampling, and testing requirements.

(1) The operator of an anthropogenic CO_2 injection well must maintain and comply with the approved monitoring, sampling, and testing plan to verify that the geologic storage facility is operating as permitted and that the injected fluids are confined to the injection zone.

(2) All permits shall include the following requirements:

(A) the proper use, maintenance, and installation of monitoring equipment or methods;

(B) monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity including, when required, continuous monitoring;

(C) reporting no less frequently than as specified in §5.207 of this title (relating to Reporting and Record-Keeping).

(3) The director may require additional monitoring as necessary to support, upgrade, and improve computational modeling of the AOR evaluation and to determine compliance with the requirement that the injection activity not allow movement of fluid that would endanger USDWs.

(4) The director may require measures and actions designed to minimize and respond to risks associated with potential seismic events, including seismic monitoring.

(5) The operator shall comply with the following monitoring and record retention requirements.

(A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) The permittee shall retain records of all monitoring information, including the following:

(i) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the permit application, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by the director at any time; and

(ii) the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment of the injection well. The director may require the operator to submit the records to the director at the conclusion of the retention period.

(C) Records of monitoring information shall include:

(i) the date, exact place, and time of sampling or measurements;

(ii) the individuals who performed the sampling or measurements;

(iii) the dates analyses were performed;

(iv) the individuals who performed the analyses;

(v) the analytical techniques or methods used; and

(vi) the results of such analyses.

(D) Operators of Class VI wells shall retain records as specified in this subchapter.

(f) Permit conditions for mechanical [~~Mechanical~~] integrity.

(1) The operator must maintain and comply with the approved mechanical integrity testing plan submitted in accordance with §5.203(j) of this title.

(2) The operator must establish mechanical integrity prior to commencing injection. Thereafter, other [~~Other~~] than during periods of well workover in which the sealed tubing-casing annulus is of necessity disassembled for maintenance or corrective procedures, the operator must maintain mechanical integrity of the injection well at all times.

(3) If the director determines that the injection well lacks mechanical integrity, the director shall give written notice of the director's determination to the operator. Unless the director requires immediate cessation, the operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The operator may resume injection upon written notification of the director's determination that the operator has demonstrated the well has mechanical integrity.

[~~(3) The operator must either repair and successfully retest or plug a well that fails a mechanical integrity test.~~]

(4) The director may allow the operator of a well which lacks internal mechanical integrity to continue or resume injection if the operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

(5) [~~(4)~~] The director may require additional or alternative tests if the results presented by the operator do not demonstrate to the director that there is no significant leak in the casing, tubing, or packer or movement of fluid into or between formations containing USDWs resulting from the injection activity.

(g) Permit conditions for AOR and corrective action. At [~~Notwithstanding the requirement in §5.203(d)(2)(B)(i) of this title to perform a re-evaluation of the AOR, at~~] the frequency specified in the approved AOR and corrective action plan or permit, and [~~the operator of a geologic storage facility also must conduct the following~~] whenever warranted by a material change in the monitoring and/or operational data or in the evaluation of the monitoring and operational data by the operator, but no less frequently than every five years, the operator of a geologic storage facility also must:

(1) perform a re-evaluation of the AOR by performing all of the actions specified in §5.203(d)(1)(A) - (C) of this title to delineate the AOR and identify all wells that require corrective action;

(2) identify all wells in the re-evaluated AOR that require corrective action;

(3) perform corrective action on wells requiring corrective action in the re-evaluated AOR in the same manner specified in §5.203(d)(1)(C) of this title; [~~and~~]

(4) submit an amended AOR and corrective action plan or demonstrate to the director through monitoring data and modeling results that no change to the AOR and corrective action plan is needed. Any amendments to the AOR and corrective action plan must be approved by the director, must be incorporated into the permit, and are subject to the permit modification requirements at §5.202 of this title (relating to Permit Required, and Draft Permit and Fact Sheet), as applicable; and

(5) retain all modeling inputs and data used to support AOR reevaluations for at least 10 years.

(h) Permit conditions for emergency [~~Emergency~~], mitigation, and remedial response.

(1) Plan. The operator must maintain and comply with the approved emergency and remedial response plan required by §5.203(l) of this title. The operator must update the plan in accordance with §5.207(a)(2)(D)(vi) of this title (relating to Reporting and Record-Keeping). The operator must make copies of the plan available at the storage facility and at the company headquarters. The emergency and remedial response plan and the demonstration of financial responsibility must account for the AOR delineated as specified in §5.203(d)(1)(A) - (C) of this title or the most recently evaluated AOR delineated under subsection (g) of this section, regardless of whether or not corrective action in the AOR is phased.

(2) Training.

(A) The operator must prepare and implement a plan to train and test each employee at the storage facility on occupational safety and emergency response procedures to the extent applicable to the employee's duties and responsibilities. The operator must make copies of the plan available at the geological storage facility. The operator must train all employees before commencing injection and storage operations at the facility. The operator must train each subsequently hired employee before that employee commences work at the storage facility.

(B) The operator must hold a safety meeting with each contractor prior to the commencement of any new contract work at a storage facility. The operator must explain emergency measures specific to the contractor's work in the contractor safety meeting.

(C) The operator must provide training schedules, training dates, and course outlines to Commission personnel annually and upon request for the purpose of Commission review to determine compliance with this paragraph.

(3) Action.

(A) If an operator obtains evidence that the injected CO_2 stream and associated pressure front may cause an endangerment to USDWs, the operator must:

(i) [~~(A)~~] immediately cease injection;

(ii) [~~(B)~~] take all steps reasonably necessary to identify and characterize any release;

(iii) [~~(C)~~] notify the director as soon as practicable but within at least 24 hours; and

(iv) [~~(D)~~] implement the approved emergency and remedial response plan.

(B) If any water quality monitoring of a USDW indicates the movement of any contaminant into the USDW, except as authorized by an aquifer exemption, the director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including plugging of the injection well, as are necessary to prevent such movement.

(4) Resumption of injection. The director may allow the operator to resume injection prior to remediation if the operator demonstrates that the injection operation will not endanger USDWs.

(i) Permit conditions for Commission witnessing of testing and logging. The operator must provide the division with the opportunity to witness all planned well workovers, stimulation activities, other than stimulation for formation testing, and testing and logging. The operator must submit a proposed schedule of such activities to the Commission at least 30 days prior to conducting the first such activity and submit notice at least 48 hours in advance of any actual activity. Such activities shall not commence before the end of the 30 days unless authorized by the director.

(j) Permit conditions for well [~~Well~~] plugging. The operator of a geologic storage facility must maintain and comply with the approved well plugging plan required by §5.203(k) of this title.

(k) Permit conditions for post-injection [~~Post-injection~~] storage facility care and closure.

(1) Post-injection storage facility care and closure plan.

(A) The operator of an injection well must maintain and comply with the approved post-injection storage facility care and closure plan.

(B) The operator must update the plan in accordance with §5.207(a)(2)(D)(vi) of this title. At any time during the life of the geologic sequestration project, the operator may modify and resubmit the post-injection site care and site closure plan for the director's approval within 30 days of such change. Any amendments to the post-injection site care and site closure plan must be approved by the director, be incorporated into the permit, and are subject to the permit modification requirements in §5.202 of this title [~~(relating to Permit Required)~~], as appropriate.

(C) Upon cessation of injection, the operator of a geologic storage facility must either submit an amended plan or demonstrate to the director through monitoring data and modeling results that no amendment to the plan is needed.

(2) Post-injection storage facility monitoring. Following cessation of injection, the operator must continue to conduct monitoring as specified in the approved plan until the director determines that the position of the CO_2 plume and pressure front are such that the geologic storage facility will not endanger USDWs.

(3) Prior to closure. Prior to authorization for storage facility closure, the operator must demonstrate to the director, based on monitoring, other site-specific data, and modeling that is reasonably consistent with site performance that no additional monitoring is needed to assure that the geologic storage facility will not endanger USDWs. The operator must demonstrate, based on the current understanding of the site, including monitoring data and/or modeling, all of the following:

(A) the estimated magnitude and extent of the facility footprint (the CO_2 plume and the area of elevated pressure);

(B) that there is no leakage of either CO_2 or displaced formation fluids that will endanger USDWs;

(C) that the injected or displaced fluids are not expected to migrate in the future in a manner that encounters a potential leakage pathway into USDWs;

(D) that the injection wells at the site completed into or through the injection zone or confining zone will be plugged and abandoned in accordance with these requirements; and

(E) any remaining facility monitoring wells will be properly plugged or are being managed by a person and in a manner approved by the director.

(4) Notice of intent for storage facility closure. The operator must notify the director in writing at least 120 days before storage facility closure. At the time of such notice, if the operator has made any changes to the original plan, the operator also must provide the revised plan. The director may approve a shorter notice period.

(5) Authorization for storage facility closure. No operator may initiate storage facility closure until the director has approved closure of the storage facility in writing. After the director has authorized storage facility closure, the operator must plug all wells in accordance with the approved plan required by §5.203(k) of this title and submit a plugging record (Form W-3) as required by §3.14 of this title (relating to Plugging).

(6) Storage facility closure report. Once the director has authorized storage facility closure, the operator must submit a storage facility closure report within 90 days that must thereafter be retained by the Commission in Austin. The report must include the following information:

(A) documentation of appropriate injection and monitoring well plugging. The operator must provide a copy of a survey plat that has been submitted to the Regional Administrator of Region 6 of the United States Environmental Protection Agency. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks including the Latitude/Longitude or X/Y coordinates of the surface location in the NAD 27, NAD 83, or WGS 84 coordinate system, a labeled scale bar, and northerly direction arrow;

(B) documentation of appropriate notification and information to such state and local authorities as have authority over drilling activities to enable such state and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zones; and

(C) records reflecting the nature, composition, volume and mass of the CO_2 stream. If mass is determined using volume, the operator must provide calculations.

(7) Certificate of closure. Upon completion of the requirements in paragraphs (3) - (6) of this subsection, the director will issue a certificate of closure. At that time, the operator is released from the requirement in §5.205(c) of this title to maintain financial assurance.

(l) Permit conditions for deed [~~Deed~~] notation. The operator of a geologic storage facility must record a notation on the deed to the facility property; on any other document that is normally examined during title search; or on any other document that is acceptable to the county clerk for filing in the official public records of the county that will in perpetuity provide any potential purchaser of the property the following information:

(1) a complete legal description of the affected property;

(2) that land has been used to geologically store CO_2;

(3) that the survey plat has been filed with the Commission;

(4) the address of the office of the United States Environmental Protection Agency, Region 6, to which the operator sent a copy of the survey plat; and

(5) the volume and mass of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred. If mass is determined using volume, the operator must provide calculations.

(m) Permit conditions for retention [~~Retention~~] of records.

(1) The permittee shall retain records of all monitoring information, including the following:

(A) calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended by the director at any time; and

(B) the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures. The director may require the operator to submit the records to the director at the conclusion of the retention period.

(2) Records of monitoring information shall include:

(A) the date, exact place, and time of sampling or measurements;

(B) the individuals who performed the sampling or measurements;

(C) the dates analyses were performed;

(D) the individuals who performed the analyses;

(E) the analytical techniques or methods used; and

(F) the results of such analyses.

(3) The operator must retain for 10 years following storage facility closure records collected to prepare the permit application, data on the nature and composition of all injected fluids, and records collected during the post-injection storage facility care period. The operator must submit [~~deliver~~] the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission.

(n) Permit conditions for signs [~~Signs~~]. The operator must identify each location at which geologic storage activities take place, including each injection well, by a sign that meets the requirements specified in §3.3(1), (2), and (5) of this title (relating to Identification of Properties, Wells, and Tanks). In addition, each sign must include a telephone number where the operator or a representative of the operator can be reached 24 hours a day, seven days a week in the event of an emergency.

(o) Other permit terms and conditions.

(1) Protection of USDWs. In any permit for a geologic storage facility, the director must impose terms and conditions reasonably necessary to protect USDWs. Permits issued under this subchapter shall be issued for the operating life of the facility and the post-injection storage facility care period. The director shall review each permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. Permits issued under this subchapter continue in effect until revoked, modified, or terminated by the Commission. The operator must comply with each requirement set forth in this subchapter as a condition of the permit unless modified by the terms of the permit.

(2) Other conditions. The following conditions shall also be included in any permit issued under this subchapter.

(A) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. However, the permittee need not comply with the provisions of the permit to the extent and for the duration such noncompliance is authorized in an emergency permit under 40 CFR §144.34.

(B) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(C) Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(D) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(E) Property rights not conveyed. The issuance of a permit does not convey property rights of any sort, or any exclusive privilege.

(F) Activities not authorized. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

(G) Coordination with exploration. The permittee of a geologic storage well shall coordinate with any operator planning to drill through the AOR to explore for oil and gas or geothermal resources and take all reasonable steps necessary to minimize any adverse impact on the operator's ability to drill for and produce oil and gas or geothermal resources from above or below the geologic storage facility.

(H) Duty to provide information. The operator shall furnish to the Commission, within a time specified by the Commission, any information that the Commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The operator shall also furnish to the Commission, upon request, copies of records required to be kept under the conditions of the permit.

(I) Inspection and entry. The operator shall allow any member or employee of the Commission, on proper identification, to:

(i) enter upon the premises where a regulated activity is conducted or where records are kept under the conditions of the permit;

(ii) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Water Code, §27.071, or the Texas Natural Resources Code, §91.1012.

(J) Schedule of compliance: The permit shall [~~may~~], when appropriate, specify a schedule of compliance leading to compliance with all provisions of this subchapter and Chapter 3 of this title. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(i) Any schedule of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(ii) If the schedule of compliance is for a duration of more than one year from the date of permit issuance, then interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.

(iii) Progress reports must be submitted no later than 30 days following each interim date and the final date of compliance.

(K) Modification, revocation and reissuance, or termination. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(L) Signatory requirement. All applications, reports, or information shall be signed and certified.

(M) Reporting requirements.

(i) Planned changes. The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.

(ii) Anticipated noncompliance. The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(iii) Transfers. This permit is not transferable to any person except after notice to and approval by the director. The director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the SDWA.

(iv) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(v) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(vi) Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally to the director within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided to the director within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The permittee shall report any noncompliance which may endanger health or the environment including:

(I) any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; and

(II) any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(N) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

(O) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subsection (e) of this section, subparagraphs (J) and (M) of this paragraph, and §5.207(a)(2)(A) of this title at the time monitoring reports are submitted. Any information shall be provided orally to the director within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided to the director within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The reports required by this subparagraph shall contain the following information:

(i) any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; and

(ii) any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

(P) Incorporation of requirements in permits. New permits, and to the extent allowed under §5.202 of this title modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section. An applicable requirement is a State statutory or regulatory requirement that takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement that takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in §5.202 of this title.

(Q) Compliance with SWDA and related regulations. In addition to conditions required in all permits, the director shall establish conditions in permits as required on a case-by-case basis to provide for and assure compliance with all applicable requirements of the SWDA and 40 CFR Parts 144, 145, 146 and 124.

§5.207. Reporting and Record-Keeping.

(a) Reporting requirements. The operator of a geologic storage facility must provide, at a minimum, the following reports to the director and retain the following information:

(1) Test records. The operator must file a complete record of all tests in duplicate with the district office within 30 days after the testing. In conducting and evaluating the tests enumerated in this sub-

chapter or others to be allowed by the director, the operator and the director must apply methods and standards generally accepted in the industry. When the operator reports the results of mechanical integrity tests to the director, the operator must include a description of any tests and methods used. In making this evaluation, the director must review monitoring and other test data submitted since the previous evaluation.

(2) Operating reports. The operator also must include summary cumulative tables of the information required by the reports listed in this paragraph.

(A) Report within 24 hours. The operator must report the items listed in clauses (i) through (v) of this subparagraph to the director and the appropriate district office orally as soon as practicable, but within 24 hours of discovery, and in writing within five working days of discovery. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The operator shall report the following items:

(i) the discovery of any significant pressure changes or other monitoring data that indicate the presence of leaks in the well or the lack of confinement of the injected gases to the geologic storage reservoir;[~~.~~ ~~Such report must be made orally as soon as practicable, but within 24 hours, following the discovery of the leak, and must be confirmed in writing within five working days~~]

(ii) any evidence that the injected CO_2 stream or associated pressure front may cause an endangerment to a USDW;

(iii) any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;

(iv) any triggering of a shut-off system (i.e., downhole or at the surface); and

(v) any failure to maintain mechanical integrity.

(B) Report within 30 days. The operator must report:

(i) the results of periodic tests for mechanical integrity;

(ii) the results of any other test of the injection well conducted by the operator if required by the director; and

(iii) a description of any well workover.

(C) Semi-annual report. The operator must report:

(i) a summary of well head pressure monitoring;

(ii) changes to the source as well as the physical, chemical, and other relevant characteristics of the CO_2 stream from the proposed operating data;

(iii) monthly average, maximum and minimum values for injection pressure, flow rate, temperature, and volume and/or mass, and annular pressure;

(iv) monthly annulus fluid volume added;

(v) a description of any event that significantly exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(vi) a description of any event that triggers a shutdown device and the response taken; and

(vii) the results of monitoring prescribed under §5.206(e) of this title (relating to Permit Standards).

(D) Annual reports. The operator must submit an annual report detailing:

(i) corrective action performed;

(ii) new wells installed and the type, location, number, and information required in §5.203(e) of this title (relating to Application Requirements);

(iii) re-calculated AOR unless the operator submits a statement signed by an appropriate company official confirming that monitoring and operational data supports the current delineation of the AOR on file with the Commission;

(iv) the updated area for which the operator has a good faith claim to the necessary and sufficient property rights to operate the geologic storage facility;

(v) tons of CO_2 injected; and

(vi) other information as required by the permit.

(E) [~~(vi)~~] Annual updates. The operator must maintain and update required plans in accordance with the provisions of this subchapter.

(i) [~~(I)~~] Operators must submit an annual statement, signed by an appropriate company official, confirming that the operator has:

(I) [~~(-a-)~~] reviewed the monitoring and operational data that are relevant to a decision on whether to reevaluate the AOR and the monitoring and operational data that are relevant to a decision on whether to update an approved plan required by §5.203 or §5.206 of this title; and

(II) [~~(-b-)~~] determined whether any updates were warranted by material change in the monitoring and operational data or in the evaluation of the monitoring and operational data by the operator.

(ii) [~~(II)~~] Operators must submit either the updated plan or a summary of the modifications for each plan for which an update the operator determined to be warranted pursuant to subclause (I) of this clause. The director may require submission of copies of any updated plans and/or additional information regarding whether or not updates of any particular plans are warranted.

~~*[(vii)* other information as required by the permit.]~~

(3) The director may require the revision of any required plan following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the director or whenever the director determines that such a revision is necessary to comply with the requirements of this subchapter.

(b) Report format.

(1) The operator must report the results of injection pressure and injection rate monitoring of each injection well on Form H-10, Annual Disposal/Injection Well Monitoring Report, and the results of internal mechanical integrity testing on Form H-5, Disposal/Injection Well Pressure Test Report. Operators must submit other reports in a format acceptable to the Commission. At the discretion of the director, other formats may be accepted.

(2) The operator must submit all required reports, submittals, and notifications under this subchapter to the director and to the Environmental Protection Agency in an electronic format approved by the director.

(c) Signatories to reports.

(1) Reports. All reports required by permits and other information requested by the director, shall be signed by a person described in §5.203(a)(1)(B) of this title, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described in §5.203(a)(1)(B) of this title;

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and

(C) the written authorization is submitted to the director.

(2) Changes to authorization. If an authorization under paragraph (1) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (1) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. All reports required by permits and other information requested by the director under this subchapter, shall be certified as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(e) Record retention.

(1) The operator must retain all data collected under §5.203 of this title for Class VI permit applications throughout the life of the geologic sequestration project and for 10 years following storage facility closure.

(2) The operator must retain data on the nature and composition of all injected fluids collected pursuant to §5.203(j)(2)(A) of this title until 10 years after storage facility closure. The operator shall submit the records to the director at the conclusion of the retention period, and the records must thereafter be retained at the Austin headquarters of the Commission.

(3) The operator must retain all testing and monitoring data collected pursuant to the plans required under §5.203(j) of this title, including wellhead pressure records, metering records, and integrity test results, and modeling inputs and data used to support AOR calculations for at least 10 years after the data is collected.

(4) The operator must retain well plugging reports, post-injection storage facility care data, including data and information used to develop the demonstration of the alternative post-injection storage facility care timeframe, and the closure report collected pursuant to the requirements of §5.206(k)(6) and (m) of this title for 10 years following storage facility closure.

(5) The operator must retain all documentation of good faith claim to necessary and sufficient property rights to operate the geologic storage facility until the director issues the final certificate of closure in accordance with §5.206(k)(7) of this title.

(6) The director has authority to require the operator to retain any records required in this subchapter for longer than 10 years after storage facility closure.

(7) The director may require the operator to submit the records to the director at the conclusion of the retention period.

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

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Haley Cochran
Assistant General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §§214.2 - 214.10, 214.12, 214.13

Introduction. The Board is proposing amendments to Chapter 214, relating to Vocational Nursing Education. Specifically, the Board is proposing amendments to §§214.2 - 214.10, 214.12 and 214.13. The proposed amendments correct outdated references; contain clarifying and editorial changes; and simplify the existing numbering system for the Board's educational guidelines that are currently referenced in the rule.

The Board considered the proposed amendments at its regularly scheduled April 2023 meeting and approved the proposal for publication in the *Texas Register* for public comment.

Section by Section Overview. Section 214.2 contains the definitions for the chapter. Proposed amended §214.2 clarifies existing definitions within the section and corrects outdated references. Additionally, proposed amended 214.2 adds a new definition of *nursing clinical judgment* for use in the chapter.

Section 214.3 contains the Board's requirements for nursing education program development, expansion, and closure. First, the proposed amendments clarify factors that will be considered by the Board when determining whether to approve a new nursing education program. Second, the proposed amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. Third, the proposed amendments clarify factors that will be considered by the Board when determining whether a nursing education program is high-risk. The proposal also specifies that the Board may require the appointment of a mentor to assist the director of a nursing education program who does not have prior experience in the director role in an effort to ensure the success of a high-risk program. Finally, the proposed amendments clarify how NCLEX-PN® examination testing codes will be addressed in the event of program consolidation.

Section 214.4 addresses nursing education program approval status. Consistent with other proposed changes throughout

the chapter, the proposed amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. The remaining proposed changes are non-substantive in nature and clarify existing provisions within the section.

The proposed amendments to §214.5 update an outdated reference.

The proposed amendments to §214.6 simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

The proposed amendments to §214.7 make editorial changes for better readability within the section.

The proposed amendments to §214.8 clarify existing requirements related to increases in enrollment of 25% or more for accredited and non-accredited programs. The remaining proposed amendments also simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule and include editorial changes.

The proposed amendments to §214.9 update an outdated reference, remove obsolete provisions from the section, and simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

The proposed amendments to §214.10 add clarity to the section and remove obsolete provisions from the section.

The proposed amendments to §214.12 make editorial changes.

The proposed amendments to §214.13 include a reference to the Board's guidelines for additional clarity in the section.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that provide additional clarity and guidance to vocational nursing education programs operating in Texas. There are no anticipated costs of compliance with the proposal. The proposed amendments do not impose any new requirements on vocational nursing education programs either operating in Texas or seeking to operate in Texas. The vast majority of the proposed amendments provide only editorial changes to the chapter. The remaining proposed amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule and include clarifying language. However, the Board does not anticipate that any of these proposed changes will result in new costs of compliance or alter the manner in which vocational nursing education programs have been complying, or will comply, with the requirements of the chapter.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administration Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal amends existing regulations primarily through non-substantive, editorial changes and provides additional clarity and simplicity to the chapter; (vii) there is no increase or decrease in the number of individuals subject to the rule's applicability; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The proposed amendments are proposed under the authority of the Occupations Code §301.151, which permits the Board to regulate the practice of professional nursing and vocational nursing. Further, the Occupations Code §301.157(b) authorizes the Board to: prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; approve schools of nursing and educational programs that meet the Board's requirements; select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the

Board; fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board; or fails to maintain the approval of the state board of nursing of another state and the Board under which it was approved.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.157.

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

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

(11) Clinical preceptor--a licensed nurse who meets the requirements in §214.10(i)(6) of this chapter (relating to Clinical Learning Experiences), who practices in the clinical setting [~~is not employed as a faculty member by the governing entity~~], and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(12) - (16) (No change.)

(17) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN),* 2021 [~~October 2010~~] (DECs).

(18 - (21) (No change.)

(22) Faculty waiver--a waiver granted by a director or coordinator of a vocational nursing education program to an individual who meets the criteria specified in §214.7(e) [~~§214.7(e)(1) - (3)~~] of this chapter.

(23) - (28) (No change.)

(29) Nursing Clinical Judgment--the observed outcome of critical thinking and decision-making that uses nursing knowledge to observe and access presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions in order to deliver safe client care. It is a decision-making model that is consistent with the nursing process model where the nurse determines and implements nursing interventions based on recognizing and analyzing patient cues (assessment and analysis), prioritizing hypotheses and generating solutions (planning), taking action (implementation), and evaluating outcomes.

(30) [~~(29)~~] Objectives/Outcomes--expected student behaviors that are attainable and measurable.

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

(31) [~~(30)~~] Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in hands-on patient/client care.

(32) [~~(31)~~] Pass rate--the percentage of first-time candidates within the examination year, as that term is defined in paragraph (19) of this section, who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN®).

(33) [~~(32)~~] Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(34) [~~(33)~~] Program of study--the courses and learning experiences that constitute the requirements for completion of a vocational nursing education program.

(35) [~~(34)~~] Recommendation--a specific suggestion based upon program assessment that is indirectly related to the rules to which the program must respond but in a method of their choosing.

(36) [~~(35)~~] Requirement--mandatory criterion based on program assessment that is directly related to the rules that must be addressed in the manner prescribed.

(37) [~~(36)~~] Shall--denotes mandatory requirements.

(38) [~~(37)~~] Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice.

(39) [~~(38)~~] Staff--employees of the Texas Board of Nursing.

(40) [~~(39)~~] Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first-hand the practice of students.

(41) [~~(40)~~] Survey visit--a virtual or [~~an~~] on-site visit to a vocational nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements. A visit to a program with an approval status other than full approval focuses on examining factors that may have contributed to the changed approval status and implementation of corrective measures.

(42) [~~(41)~~] Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the licensed vocational nurse role engages in:

(A) (No change.)

(B) participating in the planning of the nursing care needs of an individual based upon analyzing patient cues;

(C) participating in the development and modification of the nursing care plan based on the vocational nurse's nursing clinical judgment;

(D) - (E) (No change.)

(43) [~~(42)~~] Texas Higher Education Coordinating Board (THECB)--the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(44) [~~(43)~~] Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

(45) [~~(44)~~] Vocational nursing education program--an educational unit within the structure of a school, including a college, university, or career school or college or a hospital or military setting that provides a program of nursing study preparing graduates who are com-

petent to practice safely and who are eligible to take the NCLEX-PN® examination.

§214.3. Program Development, Expansion and Closure.

(a) New Programs.

(1) (No change.)

(2) Proposal to establish a new vocational nursing education program.

(A) (No change.)

(B) The new vocational nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new vocational nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC. If the governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing program's NCLEX-PN® pass rates are at least 80% for the current examination year, as that term is defined in §214.2(19) of this chapter (relating to Definitions), and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing. Evidence of poor performance by a governing entity's nursing program in another jurisdiction is sufficient grounds for denial of a proposal. Additionally, a proposal will be denied by the Board in accordance with governing statutory requirements.

(C) - (E) (No change.)

(F) The proposal shall include information outlined in Board Education Guideline 3.1.1. available at https://www.bon.texas.gov [~~3.1.1.a. Proposal to Establish a New Vocational Nursing Education Program~~].

(G) After the proposal is submitted and determined to be complete, a preliminary survey visit may [~~shall~~] be conducted by Board Staff [~~prior to presentation to the Board~~].

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) (No change.)

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: unfamiliarity[~~:~~] of the governing entity with nursing education; inexperience of the potential director or coordinator in directing a nursing program; potential for director or faculty turnover; multiple admission cycles per year; lack of rigor in admission criteria; use of a national curriculum; or potential for a high attrition rate among students. If the director has no experience in the director role, an appropriate mentor will be required to assist the director during the first year of operation.

(iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. [~~When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.~~]

(I) - (M) (No change.)

(3) (No change.)

(b) Extension Site/Campus.

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

(3) An approved vocational nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall comply with Board Education Guideline 3.1.5 available at https://www.bon.texas.gov and:

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

(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guideline 3.1.1 available at https://www.bon.texas.gov [~~3.1.1.a~~] applies.

(5) Extension programs of vocational nursing education programs that have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using [~~the~~] Board Education Guideline 3.1.5 available at https://www.bon.texas.gov [~~3.1.2.a. Initiating or Reactivating an Extension Nursing Education Program for initiating an extension program~~].

(6) A program intending to close an extension site/campus shall:

(A) (No change.)

(B) Submit required information according to Board Education Guideline 3.1.7 available at https://www.bon.texas.gov [~~3.1.2.a.~~], including:

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

(7) Consolidation. When a governing entity oversees an extension site/campus or multiple extension sites/campuses with curricula consistent with the curriculum of the main campus, the governing entity and the program director/coordinator may request in a formal letter to the Board consolidation of the extension site(s)/campus(es) with the main program, utilizing one (1) NCLEX-PN® examination testing code thereafter. After the effective date of consolidation, the NCLEX-PN® examination testing code(s) for the extension site(s) will be deactivated/closed. The NCLEX-PN® examination testing code assigned to the main campus will remain as the active code.

[~~(A) The request to consolidate the extension site(s)/campus(es) with the main campus shall be submitted in a formal letter to the Board office at least four (4) months prior to the effective date of consolidation and must meet Board Education Guideline 3.1.2.b. Consolidation of Vocational Nursing Education Programs.~~]

[~~(B) The notification of the consolidation will be presented, as information only, to the Board at a regularly scheduled Board meeting as Board approval is not required.~~]

[~~(C) The program will receive an official letter of acknowledgment following the Board meeting.~~]

[(D) After the effective date of consolidation, the NCLEX-PN® examination testing code(s) for the extension site(s) will be deactivated/closed.]

[(E) The NCLEX-PN® examination testing code assigned to the main campus will remain active.]

(c) Transfer of Administrative Control by the Governing Entity. The authorities of the governing entity shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.6 available at https://www.bon.texas.gov [3.1.3.a. Notification of Transfer of Administrative Control of a Vocational Nursing Education Program or a Professional Nursing Education Program by the Governing Entity].

(d) Closing a Program.

(1) When the decision to close a program has been made, the director/coordinator must notify the Board by submitting a written plan for closure complying with Board Education Guideline 3.1.7 available at https://www.bon.texas.gov, which includes the following:

(A) - (E) (No change.)

(2) - (6) (No change.)

(e) Approval of a Vocational Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) (No change.)

(2) A written request, the required fee set forth in §223.1(a)(20) [§223.1(e)(27)] of this title, and all required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.3 available at https://www.bon.texas.gov [3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas].

(A) [(3)] Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency (i.e., the THECB, the TWC), to conduct business in the State of Texas, must be provided before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(B) [(4)] Evidence that the program's NCLEX-PN® examination rate is at least 80% for the current examination year, as that term is defined in §214.2(19) of this chapter (relating to Definitions).

(3) [(5)] The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.3 available at https://www.bon.texas.gov [3.1.1.f.] and this section.

§214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

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

(C) Change from initial approval status to full approval status cannot occur until the program has demonstrated compliance with this chapter, has met requirements and responded to all recommendations issued by the Board, and the NCLEX-PN® examination pass rate is at least 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary for continued operation and/or as a condition for changing the approval status.

(2) (No change.)

(3) Full with warning or initial approval with warning is issued by the Board to a vocational nursing education program that is not meeting the Board's requirements.

(A) (No change.)

(B) Following the survey visit, the program will be given a list of identified areas of concern and a specified time in which to respond with a set of corrective measures. Further, in order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary for continued operation and/or as a condition for changing the approval status.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct any areas of concern identified by the Board or from findings in the program's self-study [self study] report.

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

(C) Depending upon the degree to which the Board's requirements are currently being or have been met, the Board may change the program's approval status [from conditional approval to full approval or to full approval with warning,] or may withdraw approval. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary for continued operation and/or as a condition for changing the approval status.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. A program may also elect to voluntarily close a program, as provided for in subsection (c)(12) of this section. The director/coordinator shall submit a plan for closure according to Board Education Guideline 3.1.7 available at https://www.bon.texas.gov and outlined in subsection (d) of this section. [The program shall be removed from the list of Board approved vocational nursing education programs.]

(6) When a program closes by Board action or voluntary decision, the program will be removed from the list of Board approved vocational nursing education programs, but students may complete the program in teach-out.

(b) Factors Jeopardizing Program Approval Status.

(1) When a program demonstrates non-compliance with Board requirements, approval status may be changed [to full with warning or conditional status], approval may be withdrawn, or the Board, in its discretion, may impose restrictions or conditions it deems appropriate and necessary. In addition to imposing restrictions or conditions, the Board may also require additional monitoring of the program. Board monitoring may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted

at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. [~~When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.~~]

(2) A change in approval status, requirements for restrictions or conditions, or a monitoring plan may be issued by the Board for any of the following reasons:

(A) (No change.)

(B) substantiated student complaints [~~utilization of students to meet staffing needs in health care facilities~~];

(C) - (I) (No change.)

(J) other activities or situations that demonstrate to the Board that a program is not meeting Board requirements or lacks institutional control necessary for successful student outcomes.

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-PN® examination pass rates, program compliance with this chapter, and other program outcomes. Certificates of Board approval will be sent [~~mailed~~] to all Board-approved nursing programs biennially in even-numbered years.

(1) (No change.)

(2) NCLEX-PN® Pass Rates. The annual NCLEX-PN® examination pass rate for each vocational nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) (No change.)

(B) When the passing score of first-time NCLEX-PN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1 available at https://www.bon.texas.gov [~~3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination~~]. Within one year of the submission of the Self-Study Report to the Board, the program shall provide to Board Staff evaluation data on the effectiveness of corrective measures implemented.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by program outcomes, including the NCLEX-PN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:

(i) the pass rate of first-time NCLEX-PN®, candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two (2) consecutive examination years; or [~~and~~]

(ii) (No change).

(B) A program may be placed on conditional approval status if:

(i) - (ii) (No change.)

(iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards or lacks institutional control necessary for successful student outcomes; or

(iv) (No change.)

(C) Approval may be withdrawn if:

(i) - (ii) (No change.)

(iii) the program continues to engage [~~persists in engaging~~] in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards or lacks institutional control necessary for successful student outcomes.

(D) The Board may consider a change in approval status at a regularly scheduled Board meeting for a program on initial, full approval, full approval with warning, or conditional approval if:

(i) - (ii) (No change.)

(E) The Board may, in its discretion, change the approval status of a program on full approval with warning [~~to full approval, to full approval with restrictions or conditions,~~] or impose a monitoring plan. The Board may restrict enrollments.

(F) The Board may, in its discretion, change the approval status of a program on conditional approval [~~to full approval, full approval with restrictions or conditions, full approval with warning,~~] or impose a monitoring plan. The Board may restrict enrollments.

(4) Survey Visit. Each vocational nursing education program shall be visited at least once every six (6) years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) Board Staff may conduct a survey visit at any time based upon Board Education Guideline 3.2.2 available at https://www.bon.texas.gov [~~3.2.3.a. Criteria for Conducting Survey Visits~~].

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

(5) The Board will select one (1) or more national nursing accrediting agencies, recognized by the United States Department of Education, and determined by the Board to have standards equivalent to the Board's ongoing approval standards according to Board Education Guideline 3.2.3 available at https://www.bon.texas.gov. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) (No change.)

(7) Accredited Programs. The Board may review and/or change the approval status of an accredited [~~will deny or withdraw approval from a~~] vocational nursing education program that fails to:

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

(8) A vocational nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.3 available at https://www.bon.texas.gov [~~3.2.4.a. Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization~~] if the program:

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

(9) - (10) (No change.)

[(11) The Board may assist the program in its effort to achieve compliance with the Board's requirements and standards.]

(11) [(12)] A program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal. A new proposal may not be submitted to the Board until at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's withdrawal of approval by the Board.

(12) [(13)] A vocational nursing education program accredited by a national nursing accrediting agency recognized by the Board shall:

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

(d) (No change.)

§214.5. Philosophy/Mission and Objectives/Outcomes.

(a) (No change.)

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), 2021 [October 2010] (DECs)*.

(c) - (e) (No change).

§214.6. Administration and Organization.

(a) - (f) (No change.)

(g) When the director/coordinator or of the program changes, the director/coordinator shall submit to the Board office written notification of the change indicating the final date of employment.

(1) A new Dean/Director/Coordinator Qualification Form shall be submitted to the Board office by the governing entity for approval prior to the appointment of a new director/coordinator or an interim director/coordinator in an existing program or a new vocational nursing education program according to Board Education Guideline 3.3.1 available at https://www.bon.texas.gov [3.4.1.a. Approval Process for a New Dean/Director/Coordinator or New Interim/Dean/Director/Coordinator].

(2) A curriculum vitae and all applicable official transcripts for the proposed new director/coordinator shall be submitted with the new Dean/Director/Coordinator Qualification Form, according to Board Education Guideline 3.3.1 available at https://www.bon.texas.gov [3.4.1.a].

(3) (No change.)

(h) - (j) (No change.)

§214.7. Faculty.

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

(d) Faculty Qualifications [and Responsibilities].

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

(e) - (f) (No change.)

(g) Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments do not include [are not] nursing content or clinical nursing courses.

(h) - (j) (No change.)

(k) Faculty Responsibilities [shall be responsible for]:

(1) - (4) (No change.)

(l) - (n) (No change).

§214.8. Students.

(a) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students. [Programs shall not accept admissions after the third day of class.]

(b) If a program that is accredited by a national nursing accreditation agency plans an increase of enrollment of 25% or more, it must file a substantive change proposal with the accreditation agency. Programs that are not accredited by a national nursing accreditation agency [A program] must seek approval prior to an increase in enrollment of twenty-five percent (25%) or greater by headcount in one (1) academic year for each nursing program offered. The program must notify Board Staff four (4) months prior to the anticipated increase in enrollment by following Board Education Guideline 3.5.2 available at https://www.bon.texas.gov. The Executive Director shall have the authority to approve a requested increase in enrollment on behalf of the Board. When determining whether to approve a request for an increase in enrollment under this rule, the Executive Director and/or the Board shall consider:

(1) - (6) (No change.)

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

(g) Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the vocational nursing education program.

(1) (No change.)

(2) The program shall maintain evidence of student receipt of the Board's licensure [criteria regarding] eligibility information [for licensure], as specifically outlined in subsection (c) of this section.

(3) (No change.)

(h) - (j) (No change.)

§214.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

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

(8) designed and implemented to prepare students to demonstrate the Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), 2021 [October 2010] (DECs); and

(9) (No change.)

(b) (No change.)

(c) Instruction shall include, but not be limited to: organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, nursing skills laboratory instruction and demonstration, simulated laboratory instruction, and faculty-supervised, hands-on patient care clinical learning experiences.

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

(4) Clinical [practice] learning experiences shall include actual hours of practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; debriefing; and observation experiences. Observation experiences provide supplemental learning experiences that meet specific learning objectives.

[(5) The total weekly schedule throughout the length of the program shall not exceed forty (40) hours per week, including both classroom instruction and clinical practice hours.]

[(6) Students shall be assigned two (2) consecutive non-class/clinical days off each week.]

[(7) Students shall be allocated at least eighteen (18) days leave for vacation and/or holidays.]

[(8) All scheduled holidays are to be observed on the holidays designated by the governing entity.]

[(9) Vacation time shall be scheduled at the same time for all students.]

(d) - (g) (No change.)

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.6.3 available at https://www.bon.texas.gov [3.7.3.a. Student Evaluation Methods and Tools]. A guideline that outlines the effective use of standardized examinations as an evaluation of student progress is Board Education Guideline 3.6.4 available at https://www.bon.texas.gov [3.7.4.a. Using Standardized Examinations outlines the effective use of standardized examinations as an evaluation of student progress].

[(1) A system of grading shall be in place which does not allow grades of less than a "C" on any required subject areas in the program of study.]

[(2) A program may develop admission policies to allow students to challenge course content the student may have previously completed that meets the program's course objectives/outcomes.]

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.6.1 available https://www.bon.texas.gov [3.7.1.a. Proposals for Curriculum Changes]. The two (2) types of curriculum changes are:

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

(j) (No change.)

(k) Vocational nursing education programs planning major curriculum changes shall submit a curriculum change proposal, as outlined in Board Education Guideline 3.6.1 available at https://www.bon.texas.gov [3.7.1.a.,] to the Board office for approval at least four (4) months prior to implementation.

(l) (No change.)

§214.10. Clinical Learning Experiences.

(a) Faculty shall be responsible and accountable for managing clinical learning experiences and observation experiences of students. Board Education Guideline 3.6.2 available at https://www.bon.texas.gov describes the purposes of clinical settings and reported hands-on clinical hours to meet program and course objectives.

(b) - (c) (No change.)

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences and scheduling of student time and clinical rotations.

[(1) Selected clinical learning experiences will remain unchanged unless a client's condition demands reassignment.]

[(2) Reassignment must be approved with prior consent of faculty.]

[(3) The student's daily client assignment shall be made in accordance with clinical objectives/outcomes and learning needs of the students.]

[(4) The total number of daily assignments shall not exceed five (5) clients.]

(e) - (i) (No change.)

[(j) During clinical learning experiences, programs shall not permit utilization of students for health care facility staffing.]

[(k) The affiliating agency shall:]

[(1) provide clinical facilities for student experiences;]

[(2) provide space for conducting clinical conferences for use by the school if classrooms are located elsewhere;]

[(3) provide assistance with clinical supervision of students, including preceptorships, by mutual agreement between the affiliating agency and governing entity; and]

[(4) have no authority to dismiss faculty or students. Should the affiliating agency wish to recommend dismissal of faculty or students, such recommendation(s) shall be in writing.]

§214.12. Records and Reports.

(a) Accurate and current records shall be maintained for a minimum of two (2) years in a confidential manner and be accessible to appropriate parties, including Board representatives. These records shall include, but are not limited to:

(1) records of current students, including the student's application and required admission documentation, evidence of student's ability to meet objectives/outcomes of the program, final clinical practice evaluations, signed receipt of written student policies furnished by manual and/or electronic means, evidence of student receipt of the Board's licensure [Board license] eligibility information as specifically outlined in §214.8(c) [§214.8(b)] of this chapter (relating to Students), and the statement of withdrawal from the program, if applicable;

(2) - (6) (No change.)

(b) - (e) (No change.)

§214.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the effectiveness of the total program following Board Education Guideline 3.8.1 available at https://www.bon.texas.gov. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

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

(b) - (d) (No change).

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

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CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §§215.2 - 215.10, 215.12, 215.13

Introduction. The Board is proposing amendments to Chapter 215, relating to Professional Nursing Education. Specifically, the Board is proposing amendments to §§215.2 - 215.10, 215.12, and 215.13. The proposed amendments correct outdated references; contain clarifying and editorial changes; and simplify the existing numbering system for the Board's educational guidelines that are currently referenced in the rule.

The Board considered the proposed amendments at its regularly scheduled April 2023 meeting and approved the proposal for publication in the *Texas Register* for public comment.

Section by Section Overview. Section 215.2 contains the definitions for the chapter. Proposed amended §215.2 clarifies existing definitions within the section and corrects outdated references. Additionally, proposed amended 215.2 adds a new definition of *nursing clinical judgment* for use in the chapter.

Section 215.3 contains the Board's requirements for nursing education program development, expansion, and closure. First, the proposed amendments clarify factors that will be considered by the Board when determining whether to approve a new nursing education program. Second, the proposed amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. Third, the proposed amendments clarify factors that will be considered by the Board when determining whether a nursing education program is high-risk. The proposal also specifies that the Board may require the appointment of a mentor to assist the director of a nursing education program who does not have prior experience in the director role in an effort to ensure the success of a high-risk program. Finally, the proposed amendments correct typographical errors in the section.

Section 215.4 addresses nursing education program approval status. Consistent with other proposed changes throughout the chapter, the proposed amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule. The remaining proposed changes are non-substantive in nature and clarify existing provisions within the section and make editorial edits.

The proposed amendments to §215.5 update an outdated reference.

The proposed amendments to §215.6 simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

The proposed amendments to §215.7 make editorial changes for better readability within the section.

The proposed amendments to §215.8 clarify existing requirements related to increases in enrollment of 25% or more for accredited and non-accredited programs. The remaining proposed amendments also simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule and include editorial changes.

The proposed amendments to §215.9 update an outdated reference and simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule.

The proposed amendments to §215.10 adds reference to an education guideline for additional guidance and clarity.

The proposed amendments to §215.12 make editorial changes.

The proposed amendments to §215.13 include a reference to the Board's guidelines for additional clarity in the section.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no change in the revenue to state government as a result of the enforcement or administration of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of rules that provide additional clarity and guidance to professional nursing education programs operating in Texas. There are no anticipated costs of compliance with the proposal. The proposed amendments do not impose any new requirements on professional nursing education programs either operating in Texas or seeking to operate in Texas. The vast majority of the proposed amendments provide only editorial changes to the chapter. The remaining proposed amendments simplify the existing numbering system for the Board's education guidelines that are currently referenced in the rule and include clarifying language. However, the Board does not anticipate that any of these proposed changes will result in new costs of compliance or alter the manner in which professional nursing education programs have been complying, or will comply, with the requirements of the chapter.

Costs Under the Government Code §2001.0045. The Government Code §2001.0045 prohibits agencies from adopting a rule that imposes costs on regulated persons unless the agency repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule or amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule. Pursuant to §2001.0045(c)(9), this prohibition does not apply to a rule that is necessary to implement legislation, unless the legislature specifically states §2001.0045 applies to the rule. There are no anticipated costs of compliance with the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses, micro businesses, or rural communities, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and communities and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Because there are no anticipated costs of compliance associated with the proposal, an economic impact statement and regulatory flexibility analysis is not required.

Government Growth Impact Statement. The Board is required, pursuant to Tex. Gov't Code §2001.0221 and 34 Texas Administration Code §11.1, to prepare a government growth impact statement. The Board has determined for each year of the first

five years the proposed amendments will be in effect: (i) the proposal does not create or eliminate a government program; (ii) the proposal is not expected to have an effect on current agency positions; (iii) implementation of the proposal does not require an increase or decrease in future legislative appropriations to the Board; (iv) the proposal does not affect the fees paid to the Board; (v) the proposal does not create a new regulation; (vi) the proposal amends existing regulations primarily through non-substantive, editorial changes and provides additional clarity and simplicity to the chapter; (vii) there is no increase or decrease in the number of individuals subject to the rule's applicability; and (viii) the proposal will not affect the state's economy.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on this proposal should be submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to Dusty.Johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the authority of the Occupations Code §301.151, which permits the Board to regulate the practice of professional nursing and vocational nursing. Further, the Occupations Code §301.157(b) authorizes the Board to: prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses; prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses; approve schools of nursing and educational programs that meet the Board's requirements; select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have acceptable standards, to accredit schools of nursing and educational programs; and deny or withdraw approval from a school of nursing or educational program that fails to meet the prescribed course of study or other standard under which it sought approval by the Board; fails to meet or maintain accreditation with the national nursing accrediting agency selected by the Board; or fails to maintain the approval of the state board of nursing of another state and the Board under which it was approved.

Cross Reference To Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.157.

§215.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

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

(11) Clinical preceptor--a registered nurse who meets the requirements in §215.10(j)(6) of this title (relating to Clinical Learning Experiences), who practices in the clinical setting [~~is not employed as a faculty member by the governing entity~~], and who directly supervises clinical learning experiences for no more than two (2) students. A clinical preceptor assists in the evaluation of the student during the experiences and in acclimating the student to the role of nurse. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the governing entity, preceptor, and affiliating agency (as applicable).

(12) Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctoral [~~Doctorally~~] prepared nursing faculty member and who meets the requirements of §215.10(j)(8) of this title.

(13) - (18) (No change.)

(19) Differentiated Essential Competencies (DECs)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation, as published in the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), 2021 [~~October 2010~~]* (DECs).

(20) - (22) (No change.)

(23) Faculty waiver--a waiver granted by a dean or director of a professional nursing education program to an individual who meets the criteria specified in §215.7(e) [~~§215.7(e)(1) - (3)~~] of this title.

(24) - (29) (No change.)

(30) Nursing Clinical Judgment--the observed outcome of critical thinking and decision-making that uses nursing knowledge to observe and access presenting situations, identify a prioritized client concern, and generate the best possible evidence-based solutions in order to deliver safe client care. It is a decision-making model that is consistent with the nursing process model where the nurse determines and implements nursing intervention based on recognizing and analyzing patient cues (assessment and analysis), prioritizing hypotheses and generating solutions (planning), taking action (implementation), and evaluating outcomes.

(31) [~~(30)~~] Objectives/Outcomes--expected student behaviors that are attainable and measurable.

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

(32) [~~(31)~~] Observation experience--a clinical learning experience where a student is assigned to follow a health care professional in a facility or unit and to observe activities within the facility/unit and/or the role of nursing within the facility/unit, but where the student does not participate in hands-on patient/client care.

(33) [~~(32)~~] Pass rate--the percentage of first-time candidates within the examination year, as that term is defined in paragraph (20) of this section, who pass the National Council Licensure Examination for Registered Nurses (NCLEX-RN®).

(34) [~~(33)~~] Philosophy/Mission--statement of concepts expressing fundamental values and beliefs as they apply to nursing education and practice and upon which the curriculum is based.

(35) [~~(34)~~] Professional Nursing Education Program--an education unit that offers courses and learning experiences preparing graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN® examination, often referred to as a pre-licensure nursing program. Types of pre-licensure professional nursing education programs:

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

(36) [~~(35)~~] Program of study--the courses and learning experiences that constitute the requirements for completion of a professional nursing education program.

(37) [~~(36)~~] Recommendation--a specific suggestion based upon program assessment that is indirectly related to the rules to which the program must respond but in a method of their choosing.

(38) [~~(37)~~] Requirement--mandatory criterion based upon program assessment that is directly related to the rules that must be addressed in the manner prescribed.

(39) [~~(38)~~] Shall--denotes mandatory requirements.

(40) [~~(39)~~] Simulation--activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance. Simulation provides a teaching strategy to prepare nursing students for safe, competent, hands-on practice.

(41) [~~(40)~~] Staff--employees of the Texas Board of Nursing.

(42) [~~(41)~~] Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

(43) [~~(42)~~] Survey visit--a virtual or [~~an~~] on-site visit to a professional nursing education program by a Board representative. The purpose of the visit is to evaluate the program of study by gathering data to determine whether the program is in compliance with Board requirements. A visit to a program with an approval status other than full approval focuses on examining factors that may have contributed to the changed approval status and implementation of corrective measures.

(44) [~~(43)~~] Systematic approach--the organized nursing process approach that provides individualized, goal-directed nursing care whereby the registered nurse engages in:

(A) (No change.)

(B) analyzing patient cues and establishing a plan of care based on nursing science and evidence-based practice [~~making nursing diagnoses that serve as the basis for the strategy of care~~];

(C) making nursing diagnoses that serve as the basis for the strategy of care [~~developing a plan of care based on the assessment and nursing diagnosis~~];

(D) implementing nursing care based on the registered nurse's nursing clinical judgment; and

(E) (No change).

(45) [~~(44)~~] Texas Higher Education Coordinating Board (THECB) the state agency described in Texas Education Code, Title 3, Subtitle B, Chapter 61.

(46) [~~(45)~~] Texas Workforce Commission (TWC)--the state agency described in Texas Labor Code, Title 4, Subtitle B, Chapter 301.

§215.3. Program Development, Expansion, and Closure.

(a) New Programs.

(1) (No change.)

(2) Proposal to establish a new professional nursing education program.

(A) The proposal to establish a new professional nursing education program may be submitted by:

(i) a college, [~~or~~] university, or career school or college accredited by an agency recognized by the THECB or holding a certificate of authority from the THECB under provisions leading to accreditation of the institution; or

(ii) (No change.)

(B) The new professional nursing education program must be approved/licensed or deemed exempt by the appropriate Texas agency, the THECB, or the TWC, as applicable, before approval can be granted by the Board for the program to be implemented. The proposal to establish a new professional nursing education program may be submitted to the Board at the same time that an application is submitted to the THECB or the TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by the THECB or the TWC. If the governing entity has nursing programs in other jurisdictions, the submitted program proposal must include evidence that the nursing programs' NCLEX-RN® pass rates are at least 80% for the current examination year, as that term is defined in §215.2(20) of this title (relating to Definitions), and that the nursing programs hold full approval from the state boards of nursing in the other states and are in good standing. Evidence of poor performance by a governing entity's nursing program in another jurisdiction is sufficient grounds for denial of a proposal. Additionally, a proposal will be denied by the Board in accordance with governing statutory requirements.

(C) - (E) (No change.)

(F) The proposal shall include information outlined in Board Education Guideline 3.1.1 available at https://www.bon.texas.gov [~~Guidelines 3.1.1.b. Proposal to Establish a New Diploma Nursing Education Program and 3.1.1.c. Proposal to Establish a New Pre-Licensure Associate, Baccalaureate, or Entry-Level Master's Degree Nursing Education Program~~].

(G) A proposal for a new diploma nursing education program must include a written plan addressing the legislative mandate that all nursing diploma programs in Texas must have a process in place [~~by 2015~~] to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable, and, at a minimum, entitle a graduate of the diploma program to receive an associate degree in nursing.

(H) After the proposal is submitted and determined to be complete, a preliminary survey visit may [~~shall~~] be conducted by Board Staff [~~prior to presentation to the Board~~].

(I) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal. In order to ensure success of newly approved programs, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary.

(i) (No change.)

(ii) A program may be considered high-risk if it meets one or more of the following criteria, including, but not limited to: unfamiliarity of the governing entity with nursing education; inexperience of the potential dean or director in directing a nursing program; potential for director or faculty turnover; multiple admission cycles per year; lack of rigor in admission criteria; use of a national curriculum; or potential for a high attrition rate among students. If the director has no experience in the director role, an appropriate mentor will be required to assist the director during the first year of operation.

(iii) Board monitoring of a high-risk program may include the review and analysis of program reports; extended communication with program deans and directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. [~~When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply~~].

(J) - (N) (No change).

(3) (No change.)

(b) Extension Site/Campus.

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

(3) An approved professional nursing education program desiring to establish an extension site/campus that is consistent with the main campus program's current curriculum and teaching resources shall comply with Board Education Guideline 3.1.5 available at https://www.bon.texas.gov and:

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

(4) When the curriculum of the extension site/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board Education Guideline 3.1.1 available at https://www.bon.texas.gov applies [~~Guidelines 3.1.1.b and 3.1.1.c apply~~].

(5) Extension programs of professional nursing education programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using [~~the~~] Board Education Guideline 3.1.5 available at https://www.bon.texas.gov [~~3.1.2.a. for initiating an extension program~~].

(6) A program intending to close an extension site/campus shall:

(A) (No change.)

(B) Submit required information according to Board Education Guideline 3.1.7 available at https://www.bon.texas.gov [~~3.1.2.a.~~], including:

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

(c) Transfer of Administrative Control by Governing Entity. The authorities of the governing entity shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board Education Guideline 3.1.6 available at https://www.bon.texas.gov [~~3.1.3.a. Notification of Transfer of Administrative Control of a Professional Nursing Education Program or a Professional Nursing Education Program by the Governing Entity~~].

(d) Closing a Program.

(1) When the decision to close a program has been made, the dean or director must notify the Board by submitting a written plan for closure complying with Board Education Guideline 3.1.7 available at https://www.bon.texas.gov, which includes the following:

(A) - (E) (No change.)

(2) - (6) (No change.)

(e) Approval of a Professional Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) (No change.)

(2) A written request, the required fee set forth in §223.1(a)(20) [~~§223.1(a)(27)~~] of this title, and all required supporting documentation shall be submitted to the Board office following Board Education Guideline 3.1.3 available at https://www.bon.texas.gov [~~3.1.1.f. Process for Approval of a Nursing Education Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas~~].

(A) [~~(3)~~] Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., the THECB, the TWC) to conduct business in the State of Texas, must be provided before approval can be granted by the Board for the program to conduct clinical learning experiences in Texas.

(B) [~~(4)~~] Evidence that the program's NCLEX-RN® examination rate is at least 80% for the current examination year, as that term is defined in §215.2(20) of this title (relating to Definitions).

(C) [~~(5)~~] The Board may withdraw the approval of any program that fails to maintain the requirements set forth in Board Education Guideline 3.1.3 available at https://www.bon.texas.gov [~~3.1.1.f.~~] and this section.

§215.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

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

(C) Change from initial approval status to full approval status cannot occur until the program has demonstrated compliance with this chapter, has met requirements and responded to all recommendations issued by the Board, and the NCLEX-RN® examination pass rate is at least 80% after a full examination year. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary for continued operation and/or as a condition for changing the approval status.

(2) (No change.)

(3) Full with warning or initial approval with warning is issued by the Board to a professional nursing education program that is not meeting the Board's requirements.

(A) (No change.)

(B) Following the survey visit, the program will be given a list of identified areas of concern and a specified time in which to respond with a set of corrective measures. Further, in order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary for continued operation and/or as a condition for changing the approval status.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity

to correct any areas of concern identified by the Board or from findings in the program's self-study [~~self study~~] report.

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

(C) Depending upon the degree to which the Board's requirements are currently being or have been met, the Board may change the program's approval status [~~from conditional approval to full approval or to full approval with warning,~~] or may withdraw approval. In order to ensure the continuing success of the program, the Board may, in its discretion, impose any restrictions or conditions it deems appropriate and necessary for continued operation and/or as a condition for changing the approval status.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet the Board's requirements within the specified time. A program may also elect to voluntarily close a program, as provided for in subsection (c)(12) of this section. The dean/director shall submit a plan for closure according to Board Education Guideline 3.1.7 available at https://www.bon.texas.gov and outlined in subsection (d) of this section. [~~The program shall be removed from the list of Board approved professional nursing education programs.~~]

(6) When a program closes by Board action or voluntary decision, the program will be removed from the list of Board approved professional nursing education programs, but students may complete the program in teach-out.

(7) [~~(6)~~] A diploma program of study in Texas that leads to an initial license as a registered nurse under this chapter must have a process in place [~~by 2015~~] to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB or the TWC, as applicable. At a minimum, a graduate of a diploma program will be entitled to receive an associate degree in nursing.

(b) Factors Jeopardizing Program Approval Status.

(1) When a program demonstrates non-compliance with Board requirements, approval status may be changed [~~to full with warning or conditional status~~], approval may be withdrawn, or the Board, in its discretion, may impose restrictions or conditions it deems appropriate and necessary. In addition to imposing restrictions or conditions, the Board may also require additional monitoring of the program. Board monitoring may include the review and analysis of program reports; extended communication with program directors; and additional survey visits. A monitoring plan may require the submission of quarterly reports of students' performance in courses and clinical learning experiences; remediation strategies and attrition rates; and reports from an assigned mentor to the program director. Additional survey visits by a Board representative may be conducted at appropriate intervals to evaluate the status of the program. The Board may alter a monitoring plan as necessary to address the specific needs of a particular program. [~~When the Board requires monitoring activities to evaluate and assist the program, monitoring fees will apply.~~]

(2) A change in approval status, requirements for restrictions or conditions, or a monitoring plan may be issued by the Board for any of the following reasons:

(A) (No change.)

(B) substantiated student complaints [~~utilization of students to meet staffing needs in health care facilities~~];

(C) - (I) (No change.)

(J) other activities or situations that demonstrate to the Board that a program is not meeting Board requirements or lacks institutional control necessary for successful student outcomes.

(c) Ongoing Approval Procedures. Ongoing approval status is determined biennially by the Board on the basis of information reported or provided in the program's NEPIS and CANEP, NCLEX-PN® examination pass rates, program compliance with this chapter, and other program outcomes. Certificates of Board approval will be sent [~~mailed~~] to all Board-approved nursing programs biennially in even-numbered years.

(1) (No change.)

(2) NCLEX-RN® Pass Rates. The annual NCLEX-RN® examination pass rate for each professional nursing education program is determined by the percentage of first time test-takers who pass the examination during the examination year.

(A) (No change.)

(B) When the passing score of first-time NCLEX-RN® candidates is less than 80% on the examination during the examination year, the nursing program shall submit a Self-Study Report that evaluates factors that may have contributed to the graduates' performance on the NCLEX-RN® examination and a description of the corrective measures to be implemented. The report shall comply with Board Education Guideline 3.2.1 available at https://www.bon.texas.gov [~~3.2.1.a. Writing a Self-Study Report on Evaluation of Factors that Contributed to the Graduates' Performance on the NCLEX-PN® or NCLEX-RN® Examination~~]. Within one year of the submission of the Self-Study Report to the Board, the program shall provide to Board Staff evaluation data on the effectiveness of corrective measures implemented.

(3) Change in Approval Status. The progressive designation of a change in approval status is not implied by the order of the following listing. A change in approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. A change from one approval status to another may be determined by program outcomes, including the NCLEX-RN® examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section.

(A) A warning may be issued to a program when:

(i) the pass rate of first-time NCLEX-RN® candidates, as described in paragraph (2)(A) of this subsection, is less than 80% for two (2) consecutive examination years; or [~~and~~]

(ii) (No change.)

(B) A program may be placed on conditional approval status if:

(i) - (ii) (No change.)

(iii) the program has continued to engage in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards or lacks institutional control necessary for successful student outcomes; or

(iv) (No change.)

(C) Approval may be withdrawn if:

(i) - (ii) (No change.)

(iii) the program continues to engage [~~persists in engaging~~] in activities or situations that demonstrate to the Board that the program is not meeting Board requirements and standards or lacks institutional control necessary for successful student outcomes.

(D) The Board may consider a change in approval status at a regularly scheduled Board meeting for a program on initial, full approval, full approval with warning, or conditional approval if:

(i) - (ii) (No change.)

(E) The Board may, in its discretion, change the approval status of a program on full approval with warning [~~to full approval, to full approval with restrictions or conditions,~~] or impose a monitoring plan. The Board may restrict enrollment.

(F) The Board may, in its discretion, change the approval status of a program on conditional approval [~~to full approval, full approval with restrictions or conditions, full approval with warning,~~] or impose a monitoring plan. The Board may restrict enrollment.

(4) Survey Visit. Each professional nursing education program shall be visited at least once every six (6) years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) Board Staff may conduct a survey visit at any time based upon Board Education Guideline 3.2.2 available at https://www.bon.texas.gov [~~3.2.3.a. Criteria for Conducting Survey Visits~~].

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

(5) The Board will select one (1) or more national nursing accrediting agencies, recognized by the United States Department of Education, and determined by the Board to have standards equivalent to the Board's ongoing approval standards according to Board Education Guideline 3.2.3 available at https://www.bon.texas.gov. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(6) (No change.)

(7) Accredited Programs. The Board may review and/or change the approval status of an accredited [~~will deny or withdraw approval from a~~] professional nursing education program that fails to:

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

(8) A professional nursing education program is considered approved by the Board and exempt from Board rules that require ongoing approval as described in Board Education Guideline 3.2.3 available at https://www.bon.texas.gov [~~3.2.4.a. Specific Exemptions from Education Rule Requirements for Nursing Education Programs Accredited by a Board-Approved National Nursing Accreditation Organization~~] if the program:

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

(9) - (10) (No change.)

[~~(11) The Board may assist the program in its effort to achieve compliance with the Board's requirements and standards.~~]

(11) [~~(12)~~] A program that voluntarily closes or from which approval has been withdrawn by the Board may submit a new proposal. A new proposal may not be submitted to the Board until at least twelve (12) calendar months have elapsed from the date the program's voluntary closure is accepted by the Executive Director or from the date of the program's withdrawal of approval by the Board.

(12) [~~(13)~~] A professional nursing education program accredited by a national nursing accrediting agency recognized by the Board shall:

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

(d) (No change.)

§215.5. Philosophy/Mission and Objectives/Outcomes.

(a) (No change.)

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), 2021 [~~October 2010~~]* (DECs).

(c) - (e) (No change.)

§215.6. Administration and Organization.

(a) - (g) (No change.)

(h) When the dean/director of the program changes, the dean/director shall submit to the Board office written notification of the change indicating the final date of employment.

(1) A new Dean/Director/Coordinator Qualification Form shall be submitted to the Board office by the governing entity for approval prior to the appointment of a new dean/director or interim dean/director in an existing program or a new professional nursing education program according to Board Education Guideline 3.3.1 available at https://www.bon.texas.gov [~~3.4.1.a. Approval Process for a New Dean/Director/Coordinator or New Interim/Dean/Director/Coordinator~~].

(2) A curriculum vitae and all official transcripts for the proposed new dean/director shall be submitted with the new Dean/Director/Coordinator Qualification Form according to Board Education Guideline 3.3.1 available at https://www.bon.texas.gov [~~3.4.1.a~~].

(3) (No change.)

(i) - (k) (No change.)

§215.7. Faculty.

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

(d) Faculty Qualifications [~~and Responsibilities~~].

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

(e) (No change.)

(f) Non-nursing faculty are exempt from meeting the faculty qualifications of this chapter as long as the teaching assignments do not include [~~are not~~] nursing content or clinical nursing courses.

(g) - (i) (No change.)

(j) Faculty Responsibilities [~~shall be responsible for~~]:

(1) - (4) (No change).

(k) - (m) (No change.)

§215.8. Students.

(a) (No change.)

(b) If a program that is accredited by a national nursing accreditation agency plans an increase of enrollment of 25% or more, it must file a substantive change proposal with the accreditation agency. Programs that are not accredited by a national nursing accreditation agency [~~A program~~] must seek approval prior to an increase in enrollment of twenty-five percent (25%) or greater by headcount in one (1) academic year for each nursing program offered. The program must notify Board Staff four (4) months prior to the anticipated increase in enrollment by following Board Education Guideline 3.5.2 available at https://www.bon.texas.gov. The Executive Director shall have the authority to approve an increase in enrollment on behalf of the Board.

When determining whether to approve a request for an increase in enrollment under this rule, the Executive Director and/or the Board shall consider:

(1) - (6) (No change.)

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

(g) Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the professional nursing education program.

(1) (No change.)

(2) The program shall maintain evidence of student receipt of the Board's licensure [~~license~~] eligibility information as specifically outlined in subsection (c) of this section.

(3) (No change.)

(h) - (j) (No change.)

§215.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) - (6) (No change.)

(7) designed and implemented to prepare students to demonstrate the *Differentiated Essential Competencies of Graduates of Texas Nursing Programs Evidenced by Knowledge, Clinical Judgment, and Behaviors: Vocational (VN), Diploma/Associate Degree (Diploma/ADN), Baccalaureate Degree (BSN), 2021 [~~October~~ 2010] (DECs);* and

(8) (No change.)

(b) - (g) (No change.)

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective, and psychomotor achievements in course/clinical objectives, according to Board Education Guideline 3.6.3 available at https://www.bon.texas.gov. A guideline that [~~3.7.3.a. Student Evaluation Methods and Tools. Board Education Guideline 3.7.4.a. Using Standardized Examinations.~~] outlines the effective use of standardized examinations as an evaluation of student progress is Board Education Guideline 3.6.4 available at https://www.bon.texas.gov.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board Education Guideline 3.6.1 available at https://www.bon.texas.gov [~~3.7.1.a. Proposals for Curriculum Changes~~]. The two (2) types of curriculum changes are:

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

(j) (No change.)

(k) Professional nursing education programs planning major curriculum changes shall submit a curriculum change proposal, as outlined in Board Education Guideline 3.6.1 available at https://www.bon.texas.gov [~~3.7.1.a.~~], to the Board office for approval at least four (4) months prior to implementation.

(l) (No change.)

§215.10. Clinical Learning Experiences.

(a) Faculty shall be responsible and accountable for managing clinical learning experiences and observation experiences of students. Board Education Guideline 3.6.2 available at https://www.bon.texas.gov describes the purposes of clinical settings and reported hands-on clinical hours to meet program and course objectives.

(b) - (j) (No change.)

§215.12. Records and Reports.

(a) Accurate and current records shall be maintained for a minimum of two (2) years in a confidential manner and be accessible to appropriate parties, including Board representatives. These records shall include, but are not limited to:

(1) records of current students, including the student's application and required admission documentation, evidence of student's ability to meet objectives/outcomes of the program, final clinical practice evaluations, signed receipt of written student policies furnished by manual and/or electronic means, evidence of student receipt of the Board's licensure [~~Board license~~] eligibility information as specifically outlined in §215.8(c) [~~§215.8(b)~~] of this chapter (relating to Students), and the statement of withdrawal from the program, if applicable;

(2) - (6) (No change.)

(b) - (e) (No change.)

§215.13. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the effectiveness of the total program following Board Education Guideline 3.8.1 available at https://www.bon.texas.gov. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

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

(b) - (d) (No change.)

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

Filed with the Office of the Secretary of State on June 19, 2023.

TRD-202302197
John Vanderford
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: July 30, 2023
For further information, please call: (512) 305-6879

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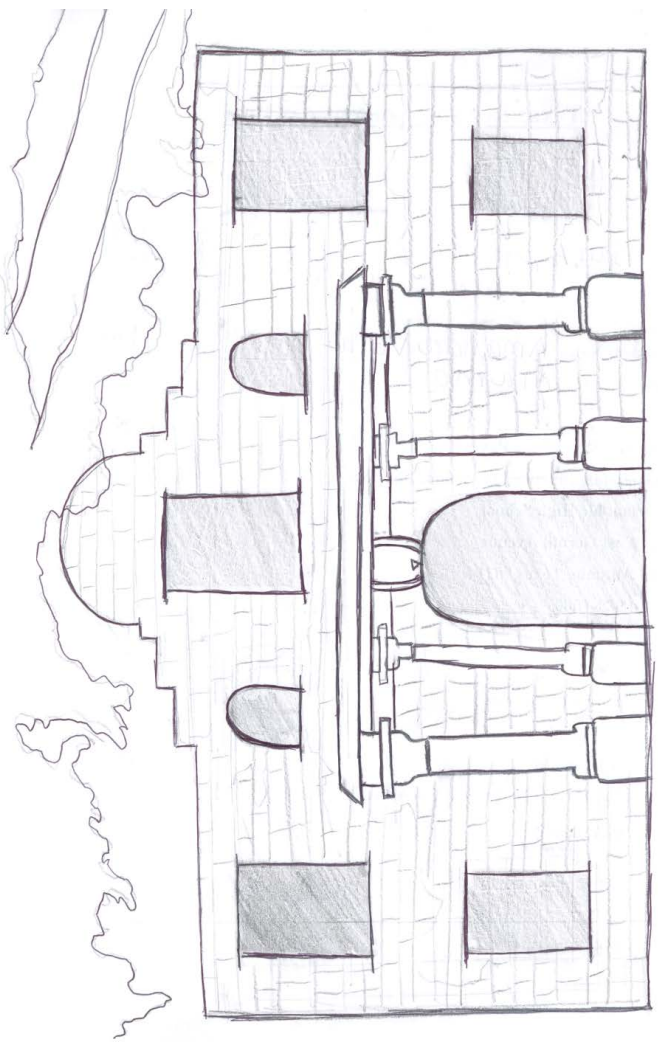

ADOPTED RULES

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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.2

The Texas State Securities Board adopts an amendment to §101.2, concerning Classification of Regulatory Standards, without changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1793). The amended rule will not be republished.

Subsection (e) is amended to conform terminology to the Texas Securities Act and existing rules, and the statutory reference in subsection (f) is updated to refer to the codified version of the Act, which became effective January 1, 2022. Subsection (f) is also reorganized, and language concerning a fee that is duplicative of a section in the Act is replaced with a reference to the statutory provision setting the amount of the fee.

The rule is current and accurate, and it conforms to §4006.058 of the Act, which promotes transparency and efficient regulation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects Texas Government Code §4006.058.

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

Filed with the Office of the Secretary of State on June 16, 2023.

TRD-202302179
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: July 6, 2023
Proposal publication date: April 7, 2023
For further information, please call: (512) 305-8303

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CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.6

The Texas State Securities Board adopts an amendment to §103.6, concerning Negotiated Rulemaking, without changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1794). The amended rule will not be republished.

A typographical error in the rule has been corrected.

The rule will be clear and accurate.

No comments were received regarding adoption of the amendment.

STATUTORY AUTHORITY

The amendment is adopted under the authority of the Texas Government Code, Sections 4002.151 and 4002.1535. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4002.1535 requires the Board to develop a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of Board rules; and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Board's jurisdiction.

The adopted amendment affects Chapter 2008 of the Texas Government Code and the Texas Securities Act, Texas Government Code Sections 4001.001-4008.105.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §§104.2, 104.3, 104.6

The Texas State Securities Board adopts amendments to §104.2, concerning Purpose; §104.3, concerning Definition of Days; and §104.6, concerning Exceeding the Time Periods, with changes to the proposed text as published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1794). The amendments will be republished.

The changes made consist of the addition of a parenthetical in each rule after each cross-reference to multiple sections to include the names of the sections being referenced. These non-substantive changes to the rule text were made at the request of the Texas Register editors when the notice of the rule adoptions were submitted for publication.

Sections 104.2, 104.3, and 104.6 of this title are amended to more accurately refer to the relevant sections in the Chapter, and the reference to a section of the Texas Securities Act in subsection (f) of 104.6 is updated to refer to the codified version of the Texas Securities Act in the Texas Government Code, which became effective January 1, 2022.

References to other rules in the Chapter are clarified and a statutory reference conforms to the codified version of the Act which promotes transparency and efficient regulation.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Government Code, Section 4002.151. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendments affect Texas Government Code §2005.003, and the following sections of the Texas Securities Act: Texas Government Code §4002.154; Chapter 4003, Subchapters A, B, and C; and Chapter 4004, Subchapters A-G.

§104.2. Purpose.

Sections 104.2 - 104.6 of this title (relating to Purpose, Definition of Days, Registration of Securities--Review of Applications, Registration of Dealers and Investment Advisers--Review of Applications, and Exceeding the Time Periods, respectively) are intended to implement the provisions of Texas Government Code, Chapter 2005. They are not intended to supersede any substantive requirement of the Texas Securities Act or Board rules. If a provision under one of these sections would cause such a conflict, the provision will not be given effect under the particular circumstances giving rise to the conflict.

§104.3. Definition of Days.

For purposes of §§104.2 - 104.6 of this title (relating to Purpose, Definition of Days, Registration of Securities--Review of Applications, Registration of Dealers and Investment Advisers--Review of Applications, and Exceeding the Time Periods, respectively) "days" means each calendar day without any exclusions.

§104.6. Exceeding the Time Periods.

(a) The Agency may exceed the time periods set forth in §104.4 or §104.5 of this title (relating to Registration of Securities--Review of Applications and Registration of Dealers and Investment Advisers--Review of Applications, respectively) if:

(1) the number of permits and registration authorizations exceeds by 15% or more the number processed in the same calendar quarter of the preceding year;

(2) the Securities and Exchange Commission, CRD, IARD, or another public or private entity, including the applicant itself, causes the delay;

(3) the applicant requests delay; or

(4) other conditions exist that give the Agency good cause for exceeding the established time periods.

(b) If it appears to the applicant that for reasons other than those set forth in subsection (a)(2) of this section, the Agency exceeded the time periods, the applicant may appeal by filing a complaint in writing with the Deputy Commissioner who shall provide the staff with a copy of the complaint immediately.

(c) If the Agency's staff believes that the time periods were not exceeded for the reasons alleged in the complaint, the staff may file with the deputy commissioner a written response to the complaint within five days of receipt by the Agency of the complaint.

(d) The deputy commissioner shall render a decision and communicate it to the applicant within 10 days of receipt of the applicant's complaint, whether or not a response is filed by the staff.

(e) If the complaint is decided in favor of the applicant, the applicant shall receive full reimbursement of all filing fees paid by the applicant.

(f) If the complaint is decided in favor of the staff, the applicant may appeal the decision by requesting a hearing before the Commissioner pursuant to the Texas Securities Act, §4007.107(a).

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

Filed with the Office of the Secretary of State on June 16, 2023.

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Travis J. Iles
Securities Commissioner
State Securities Board
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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.606, 10.613, 10.622, 10.626, 10.627

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes to the proposed text as published in the March 24, 2023, issue of the *Texas Register* (48 TexReg 1608), amendments to 10 TAC §10.606 Construction Inspections; 10 TAC §10.613 Lease Requirements; 10 TAC §10.622 Special Rules Regarding Rents and Rent Limits Violations; 10 TAC §10.626 Liability; and 10 TAC §10.627 Temporary Suspension of Sections of this Subchapter. The

rules will be republished. The rule amendments add a new and revised notification requirements regarding rent increases, correct references to other Department rules, add existing and new program requirements to existing subsections of the rule, and delete outdated references to Average Income.

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

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the adopted rule amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;

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

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

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

5. The adopted amendment to the rule will create a new regulation; which is needed to provide economic benefit for tenants.

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

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

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

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the adopted amendment to the rule is in effect, the public benefit anticipated as a result of the action will be a clearer and more germane rule. While there may be a theoretical loss of increased rent to the developer, i.e. to not be able to receive rent increases for the notice period, this theoretical loss is difficult to quantify and a simple and reliably accurate model for such loss cannot be created: for every tenant that may remain in the property and could be estimated to pay the increased rent, it may be just as likely that the charged tenant, when learning of a rent increase of that amount (over $900 per year if more than $75 per month) would be unable to pay the increased rent, give notice and move-out, or just moves out -- in all cases creating a different economic impact on the tenant and property. Additionally, to only consider the fiscal impact to the developments limits the analysis to only the property. The fiscal impact on a low-income household of a large rent increase with little to no advance notice cannot be disregarded from this analysis, nor the likelihood of increased evictions. Therefore, the public benefit versus the theoretical cost clearly favors the adoption of this policy, which also falls squarely within the foundational purposes of the Department as seen in Tex. Gov't Code §§2306.001 and .002.

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

SUMMARY OF PUBLIC COMMENT. Public comment was accepted from March 24, 2023, through April 24, 2023. Comment was received from 7 commenters. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

Executive Vice President, Texas Apartment Association

Program Manager, Supportive Housing and Community Recovery Team

Attorney at Law, Texas RioGrande Legal Aid

Research Analyst, Texas Housers

Resolution Asset Management, Encore Residential

Compliance Director, Dayrise Residential

Compliance Director, Accolade Property Management

Rule Section §10.606.

Comment Summary: No comments received

Rule Section §10.613.

Comment Summary: Commenter 3 proposes a small grammatical adjustment to the second sentence in subsection (n). The sentence should read: "Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction..."

Commenter 4 proposes strengthening tenant protections related to termination of tenancy and applying these protections consistently to all multifamily programs. Their proposals include defining "good cause," requiring all payments apply to rent first and not late fees, and pursuing alternatives to eviction, including providing opportunities to cure lease violations. They propose the following language: "§10.613(a-1) Eviction and/or termination of lease for HTC, TCAP, and Exchange Developments.

(1) The Development must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than those listed in section §10.613(a-1)(2) are prohibited.

(2) Owner may not terminate the tenancy or refuse to renew the least of a tenant except for:

(i) Serious or repeated violations of the terms and conditions of the lease agreement (e.g., failure to pay rent, or unlawful activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; willful and repeated destruction of rental property or property of other residents; or use of the unit for unlawful purposes);

(ii) Completion of tenancy period for transitional housing in which case at least 30 days before the end of the transitional housing tenancy period, the Owner is required to provide the tenant with written notice that the tenancy period is ending in accordance with subsection (a-2), or

(iii) The temporary or permanent uninhabitability of the Development justifying relocation of all or some of the Development's tenants (except where such uninhabitability is caused by the deferred maintenance, actions or inactions of the Owner). Termination under this provision shall trigger either the Relocation provisions in section 8 of this subsection or grounds for termination of the lease, except in cases where the property becomes uninhabitable due to the tenant's intentional actions.

(3) Owner hereby agrees to apply all partial and/or full payments made by a tenant or on behalf of a tenant to Rent first to reduce the risk of eviction for nonpayment of rent.

(4) Should a tenant become current on Rent prior to the issuance of a judgment for eviction due to nonpayment of Rent, Owner agrees to dismiss the eviction proceeding with prejudice.

(5) Owner may not evict a tenant for nonpayment of Rent after a Payment Plan has been entered into, unless the tenant subsequently violates the Payment Plan.

(6) In the event of an eviction being filed against a tenant, Owner will provide contact information of government-funded legal aid agencies or other legal representation organizations the tenant may contact to request assistance in either understanding or representing them in the eviction process. Owner agrees to work with the legal representative, if one is obtained, to reach an agreement and dismiss the eviction proceeding or take other measures to prevent the court from issuing a judgment in the eviction proceeding.

(7) Once a lease is terminated, Owner may not take, hold, or sell personal property of the tenant, or any occupant of the tenant's dwelling, without written notice to the tenant and a court decision on the rights of the parties except when the property remains in the unit after the tenant has moved out of the unit and the property is disposed of in accordance with State law.

(8) Tenant relocation for HTC, TCAP, and Exchange Developments. If a tenant is required to move out of the Development, or a tenant's individual unit, due to any repair, replacement, renovation of the unit, Owner will provide relocation assistance to the tenant including but not limited to packing, moving, storage and seeking a replacement unit as closely as possible mirroring Development and the living conditions (e.g. location, cost, proximity to community resources, etc.) the tenant enjoyed while residing at the Development. Upon the completion of such repairs or renovations which necessitated the tenant's relocation, Owner agrees to offer the tenant the Right of First Refusal to return to their previous unit or a comparable unit within the Development. If the tenant refuses to return to the Development within thirty (30) business days from the date that the Right of First Refusal was offered, then the Owner is no longer responsible for providing relocation assistance.

§10.613(a-2) Notices regarding eviction and/or termination of lease for HTC, TCAP, and Exchange Developments.

(1) To terminate or refuse to renew a tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy, unless the termination is based on serious violent criminal activity that poses an immediate threat to the safety of staff or other residents.

(2) The written notice shall be served to the tenant by either:

(i) Both first class mail and either certified or registered mail; or

(ii) by personal delivery to the tenant or a household member 16 years or older.

(3) Opportunity to Discuss. The written notice shall also inform the tenant of the right to discuss with the Owner the proposed termination or non-renewal of tenancy. The notice must give the tenant at least ten (10) business days from the date of the notice to request a meeting with the Owner. The tenant may provide written notice of a request to meet with an Owner through mail, text message, e-mail, or any other written communication that the Owner uses for correspondence with tenants. If the tenant makes a timely request, the Owner agrees to meet with the tenant and to discuss the proposed termination or nonrenewal.

(4) Opportunity to Cure Lease Violations. For termination or nonrenewal of tenancy due exclusively to serious or repeated lease violations, excluding drug activity or other serious criminal activity, the written notice shall also inform the tenant of the opportunity to cure any alleged violation of the lease agreement before the effective date of the termination or nonrenewal in the written notice as required by paragraph (1) of this subsection."

Commenter 5 and Commenter 6 oppose adding the CARES Act requirement of a 30 day eviction notice for nonpayment of rent. They argue that this 30 days is in addition to the time it takes to get a court date. They feel this is unreasonable and hinders the owner's ability to pay for rising costs.

STAFF RESPONSE:

Staff agrees with Commenter 3 and proposes their language be adopted.

While staff appreciates Commenter 4's commitment to helping low income Texans, their proposed rewrite of 10 TAC §10.613(a), Eviction and/or termination of lease for HTC, TCAP, and Exchange Developments, would be an overreach of the Department's authority and would cause a financial and administrative burden for the Department's stakeholders. It is not within the Department's purview to define "good cause;" this is the job of the judicial system. The additional clarifications in the rule for federally funded Developments or Developments with HOME Match Units in §10.613(b) are pulled directly from federal regulations, but do not apply to the tax credit program. The Department does not wish to overly regulate. We believe these comments may be more effectively implemented by amending the lease contract, which is a tenant-landlord matter. No changes to this section will be made as a result of this comment.

Staff disagrees with comments made by Commenters 5 and 6. After receiving previous comments in opposition to the CARES Act 30 day eviction notice, staff agreed to add language that would make this provision invalid if additional legislation is passed removing or altering the requirement. In the meantime, staff is required to enforce the requirement and felt that adding it to the compliance rules would add clarity and transparency. No changes to this section will be made as a result of these comments.

Rule Section §10.622.

Comment Summary: Commenter 1 opposes the proposed change requiring 75 days' notice for rental increases of $75 or more as arbitrary. They feel a 30 or 60 day notice is more compatible with the TAA lease and the current practice of most owners. Commenter 5 agrees with Commenter 1 and adds that they should be able to evict people who are just "working the system" and move in people who can actually pay their rent.

Commenter 2 supports this change and asks that language be added to require the notice also be sent to the applicable housing authority if the tenant is a voucher holder. That way the tenant will know whether the increase is covered by the voucher or not, decreasing the risk of incurring late fees or facing eviction.

Commenter 3 feels the proposed change does not go far enough. Ideally rent would be locked in for the entire term of the lease as it is with conventional apartments. Also, the $75 is arbitrary, and the amount should instead be based on

a percentage of the current rent. The commenter proposes the following language: "(l) An owner may not increase the rent during the first six months of the lease term. Owners who choose to increase the rent during the lease term must give 75 days' written notice of the rent increase and may not increase the rent by more than 2% of the monthly rent. Tenants who are notified of a rent increase during the term of the lease must also be notified that they have the legal right to terminate their tenancy any time before the effective date of the rent increase. If an owner increases the household rent by more than 2% after the end of the lease term, the owner must give the household 75 days' written notice of the proposed rent increase."

Commenter 4 supports the proposed changes and requests the Department update the "Income and Rent Limit Tenant Handout" and "Income and Rent Limits in TDHCA-Supported Properties" webpage to highlight the new requirements.

Commenter 6 opposes both the 75 day notice requirement and the $75 limit. They argue that most housing authorities require a 60 day notice of increase for their voucher holders, and that should be sufficient across the board. If required to send out a 75 day notice, another notice would still be required at 60 days for voucher holders. Also, they feel rental increases should not be capped at $75 because, due to COVID, many owners have not raised rent in years. Increases of any amount should be allowed as long as the rent remains below the limit.

Commenter 7 opposes the proposed notice requirement because the 75 days does not align with the lease's 35 day notice requirement. They also feel that maximum rent should be available to owners as soon as possible for the long-term viability of the asset.

STAFF RESPONSE:

In response to Commenters 1 and 5, staff does not believe that 60 days is enough time for low income tenants to prepare for a rent increase of $75 or more. As multiple commenters noted, the cost of doing business has increased due to inflation; however, the same can be said for the cost of living for the tenant.

In response to Commenter 2, staff appreciates the intent; however, the relationship between the owner and the housing authority is not regulated by the Department. If Commenter believes strongly in this requirement, it would be best to work with the housing authority or HUD.

In response to Commenter 3, staff agrees that it is an unfair reality that a lease contract for market households locks in a rental rate for the entire term but does not for low income tenants; however, owners of market rate housing do not have rent restrictions. Department programs are already rent restricted under federal and state regulations. It is not the Department's role to implement further rent control. Several bills are currently making their way through the state legislature which if enacted would regulate rental increases during a lease term, and the Department continues to monitor their progress.

Staff appreciates Commenter 4's support and will look into updating the handouts.

In response to Commenter 6, staff is not advocating a cap on rental increases; only a threshold at which the owner must provide extended notice. Staff does not believe the housing authority would oppose notice of an additional 15 days; therefore only one notice at 75 days would need to be given.

In response to Commenter 7, staff feels that while there may be a theoretical loss of increased rent to the developer, i.e. to not be able to receive rent increases for the notice period, this theoretical loss is difficult to quantify and a simple and reliably accurate model for such loss cannot be created: for every tenant that may remain in the property and could be estimated to pay the increased rent, it may be just as likely that the charged tenant, when learning of a rent increase of that amount (over $900 per year if more than $75 per month) would be unable to pay the increased rent, give notice and move-out, or just moves out -- in all cases creating a different economic impact on the tenant and property. Additionally, to only consider the fiscal impact to the developments limits the analysis to only the property. The fiscal impact on a low-income household of a large rent increase with little to no advance notice cannot be disregarded from this analysis, nor the likelihood of increased evictions. Therefore, the public benefit versus the theoretical cost clearly favors the adoption of this policy, which also falls squarely within the foundational purposes of the Department as seen in Tex. Gov't Code §§2306.001 and .002.

Rule Section §10.626.

Comment Summary: No comments received

Rule Section §10.627.

Comment Summary: No comments received

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

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

§10.606. Construction Inspections.

(a) Owners are required to submit evidence of final construction within 30 calendar days of completion in a format prescribed by the Department. Owners are encouraged to request a final construction inspection promptly to allow the Department to inspect Units prior to occupancy to avoid disruption of households in the event that corrective action is required. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws, and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(b) During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility requirements. In addition, a Uniform Physical Condition Standards inspection may be completed.

(c) IRS Form(s) 8609 will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

§10.613. Lease Requirements.

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action. For nonpayment of rent, HTC, TCAP, Exchange, and NHTF Developments require a thirty (30) day written notice. If the CARES Act is modified to eliminate the 30-day notice requirement, HUD or Treasury requirements will supersede this 30-day notice requirement for nonpayment of rent.

(b) HOME, TCAP RF, NHTF, NSP, and HOME-ARP Developments are prohibited from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, NSP, and HOME-ARP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy. For HOME-ARP, Owners may not terminate the tenancy or refuse to renew the lease of the Qualifying Household in any Unit that is supported by capitalized operating costs because of the household's inability to pay rent of more than 30 percent of the qualifying household's income toward rent during the longer of the federal affordability period or the time period identified in the Contract.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. Additionally, it shall not be construed as a serious or repeated violation of a lease or action eligible for termination of tenancy if a person has opposed any act or practice made unlawful by the Violence Against Women Act 2022, or because that person testified, assisted, or participated in any matter covered by the Violence Against Women Act 2022.

(d) A Development must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, NSP, ERA and HOME-ARP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, NSP, ERA, and HOME-ARP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c), and Section 1018 of Title X, as applicable). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) An Owner may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the Unit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, HOME, and HOME-ARP Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, HOME Match, TCAP RF, or NHTF Units to an organization that, in turn, rents those Units to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP and HOME-ARP Developments may only utilize Master Leases, if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Units leased to an organization through a supportive housing program where the owner receives a rental payment for the Unit regardless of physical occupancy will be found out of compliance if the Unit remains vacant for over 60 days. The Unit will be found out of compliance under the Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit amenities, and services; and

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

(m) For Section 811 PRA Units, Owners must use the HUD Model lease, HUD form 92236-PRA.

(n) Except as identified in federal or state statute or regulation for Direct Loans, or as otherwise identified in this Chapter, the Department does not determine if an Owner has good cause or if a resident has violated the lease terms. Challenges to evictions or terminations of tenancy must be determined by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will

report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out-of-pocket costs for processing an application without providing documentation. Example 622(2): A Development's out-of-pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC Developments after the Compliance Period, HTC properties for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND, and THTF the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate Units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal to or less than 50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of subsection (g) of this section.

(i) Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is

calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter (relating to Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents) which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12-month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

(l) If an Owner is increasing a household's rent $75 or more per month, the Owner is required to provide the household a 75-day written notice of such increase, unless the Unit or household is governed by a federal housing program that requires such a change. If an Owner increases the household's rent more than $75 without providing a 75-day notice, any amounts in excess of $75 per month must be refunded or credited to the affected household(s). The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In absence of a tenant election, a full refund check must be presented to the household.

§10.626. Liability.

Full compliance with all applicable program requirements, including compliance with §42 of the Code, is the responsibility of the Development Owner. If the Development Owner engages a third party to address any such requirements, they are jointly and severally liable with the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the Code, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME, HOME-ARP, NHTF, TCAP RF, and NSP program regulations, Bond and ERA program requirements, and any other laws, regulations, requirements, or other programs monitored by the Department.

§10.627. Temporary Suspension of Sections of this Subchapter.

(a) Subject to the limitations stated in this section, temporary suspensions of sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

(b) Under no circumstances can the Executive Director, the Enforcement Committee or the Board suspend for any period of time compliance with the HOME Final Rule, NHTF Interim Rule, or regulations issued by HUD or any other federal agency when required by federal law.

(c) Under no circumstances can the Executive Director, the Enforcement Committee or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of IRS Form 8823, or any sections of 26 U.S.C. §42.

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

Filed with the Office of the Secretary of State on June 16, 2023.

TRD-202302177
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: July 6, 2023
Proposal publication date: March 24, 2023
For further information, please call: (512) 475-3959

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 300. MANUFACTURE, DISTRIBUTION, AND RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §300.104

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the amendment to §300.104, concerning Manufacturing and Processing of Hemp Products for Smoking. The amendment to §300.104 is adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1513). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment to §300.104 removes the prohibition of "distribution" and "retail sale" of hemp products for smoking.

House Bill 1325, 86th Legislature, Regular Session, 2019, established Texas Health and Safety Code, Chapter 443, Manufacture, Distribution, and Sale of Consumable Hemp Products (CHPs). Texas Health and Safety Code §443.204(4) prohibits "the processing or manufacturing of a consumable hemp product for smoking."

On June 24, 2022, as a result of *Texas Dep't of State Health Servs. v. Crown Distrib. LLC,* 647 S.W.3d 648 (Tex.2022), the Texas Supreme Court upheld the ban on the manufacturing and processing of consumable hemp products for smoking within the state of Texas. The amendment complies with the ruling in *Texas Dep't of State Health Servs. v. Crown Distrib. LLC* and Texas Health and Safety Code §443.204(4).

COMMENTS

The 31-day comment period ended on Monday, April 17, 2023.

During this period, DSHS did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services by DSHS, and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on June 15, 2023.

TRD-202302165
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: July 5, 2023
Proposal publication date: March 17, 2023
For further information, please call: (512) 800-5343

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 301. IDD-BH CONTRACTOR ADMINISTRATIVE FUNCTIONS

SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS

DIVISION 2. ORGANIZATIONAL STANDARDS

26 TAC §301.327

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §301.327, concerning Access to Mental Health Community Services.

Section 301.327 is adopted without changes to the proposed text as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1515). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The adopted rule is necessary to broaden the type of staff qualified to answer and screen crisis hotline calls for local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and their subcontractors. The adopted rule allows staff members trained in crisis screening to conduct the crisis calls in addition to staff members who are credentialed as a Qualified Mental Health Professional-Community Services (QMHP-CS). This allows LMHAs, LBHAs, and their subcontractors to broaden recruiting and applicant pools thereby potentially reducing call wait times and answering more calls within the required timeframe.

COMMENTS

The 31-day comment period ended April 17, 2023.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, Health and Safety Code §533.0345(a), which requires the Executive Commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; §533.0356(i), which allows the Executive Commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and §534.052(a), which requires the Executive Commissioner of HHSC to adopt rules, including standards, the Executive Commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Chapter 534.

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

Filed with the Office of the Secretary of State on June 13, 2023.

TRD-202302136
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: July 3, 2023
Proposal publication date: March 17, 2023
For further information, please call: (512) 672-4255

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 55. LUMP SUM PAYMENTS

28 TAC §55.15

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 Texas Administrative Code §55.15, concerning Compromise Settlement Agreements. DWC adopts §55.15 without changes to the proposed text published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 639) and will not be republished.

REASONED JUSTIFICATION. Amending §55.15 is necessary to update obsolete submission method requirements and obsolete references to the Industrial Accident Board, a predecessor agency of DWC. The amendments eliminate the use of colored or carbon copy paper when submitting settlement agreements to DWC. The amendments do not change the requirements of settlement agreements, just the way they are submitted to DWC. The amendments also update the agency's name.

Labor Code §402.061 requires the commissioner of workers' compensation to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 55.15

implements requirements for the contents of compromise settlement agreements. Former §55.15(6) required that all compromise settlement agreements be submitted to DWC in four parts on carbonless paper or with carbon paper left intact. Adopted §55.15(b) no longer has the requirement to submit compromise settlement agreements on carbonless paper and now requires compromise settlement agreements to be sent to DWC in the form and manner DWC prescribes.

SUMMARY OF COMMENTS. DWC did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §55.15 under Labor Code §§408.005, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 requires in part that a settlement be signed by the commissioner and all parties to the dispute and sets out criteria for the commissioner to approve the settlement. Subsection (f) states that a settlement that is not approved or rejected before the 16th day after the date the settlement is submitted to the commissioner is considered to be approved by the commissioner on that date. So, to comply with Labor Code §408.005, settlements must be submitted to the commissioner.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

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

Filed with the Office of the Secretary of State on June 13, 2023.

TRD-202302152
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 3, 2023
Proposal publication date: February 10, 2023
For further information, please call: (512) 804-4703

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 5. ADVISORY COMMITTEES AND GROUPS

SUBCHAPTER B. ADVISORY COMMITTEES

30 TAC §5.3, §5.15

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §5.3; and new §5.15.

Amended §5.3 and new §5.15 are adopted *without changes* to the proposed text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 298) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking adoption implements the requirements of Texas Government Code, Chapter 2110 with respect to establishing in rule the date on which an advisory committee is abolished.

During Sunset review, Sunset Commission staff recommended that the agency renew advisory committees created by the commission through a rulemaking process. Texas Government Code, §2110.008 provides that an advisory committee is automatically abolished on the fourth anniversary date of its creation unless the state agency has established, by rule, a different date on which the advisory committee will automatically be abolished. In consideration of the Sunset review recommendation, the commission determined that seven advisory committees that do not have dates for abolishment currently established in statute or rule should continue in existence because they continue to serve the purpose of providing advice to the agency. This rulemaking will continue the existence of those seven advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The rule specifies December 31, 2032, as the date of abolishment for these advisory committees. Advisory committees that are subject to a statutory duration or excluded from the applicability of Texas Government Code, Chapter 2110 are not included in this rule.

Section by Section Discussion

The commission adopts the amendment to §5.3 providing that advisory committees created by the commission are to be automatically abolished according to the requirements of Texas Government Code, §2110.008 unless the advisory committee is required to remain in effect without abolishment under a state or federal law, or a different date for abolishment is established under §5.15. An advisory committee that is subject to a requirement under a state or federal law to remain in effect without abolishment or an advisory committee that is not subject to Texas Government Code, §2110.008 is not subject to abolishment under §5.3 or §5.15.

The commission adopts new §5.15 to establish the duration of advisory committees under subchapter B. New subsection (a) provides that the advisory committees listed in subsection (b) are renewed and continue to exist with the abolishment date established for the listed advisory committee. New subsection (b) establishes an abolishment date of December 31, 2032, for the following advisory committees: the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee. The commission expects that future rulemaking may add to the list of advisory committees or amend the date of abolishment for any advisory committee.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis

requirements of the Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking adoption is not a major environmental rule because it is not anticipated to adversely effect 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 since the rulemaking adoption addresses procedural requirements for the abolishment of advisory committees. Likewise, there will be no adverse effect in a material way 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 from the revisions because the changes are not substantive. The rulemaking addresses procedural requirements for establishing the dates on which listed advisory committees are to be abolished.

Texas Government Code, §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 authority of the commission. The rulemaking adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is adopting this rulemaking to continue advisory committees and establish the dates on which the advisory committees will be abolished. There are no standards set by federal law that are exceeded by the adopted rules.

Second, the rulemaking adoption does not exceed a requirement of state law because Texas Government Code Chapter 2110 authorizes a state agency to establish, by rule, the date on which an advisory committee is to be abolished.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. There is no applicable delegation agreement or contract addressing the duration requirements for advisory committees.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by Texas Water Code, §5.103 which provides specific authority to adopt rules and §5.107 which authorizes the commission to create advisory committees.

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

The commission evaluated the rulemaking adoption and performed analysis of whether the adopted rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to continue the existence of listed advisory committees and establish the date on which the advisory committees are to be abolished. The rulemaking adoption substantially advances these stated purposes by adopting rules that continue the existence of the Water Utility Operator Licensing Advisory Committee, the Municipal Solid Waste Management and Resource Recovery Advisory Council, the Irrigator Advisory Council, the Concho River Watermaster Advisory Committee, the Rio Grande Watermaster Advisory Committee, the South Texas Watermaster Advisory Committee, and the Brazos Watermaster Advisory Committee and establish the date of December 31, 2032, on which these committees will be abolished.

The commission's analysis indicates that the 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 real property because the adopted 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. The adopted rules are procedural, addressing the requirements for advisory committees, and do not affect real property.

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 §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(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 regarding the coastal management program.

Public Comment

The commission offered/held a public hearing on February 27, 2023. The comment period closed on February 28, 2023. The commission received comments from Harris County Pollution Control Service (HCPCS).

Response to Comments

Comment

HCPCS commented that it recommends that the Texas Health & Safety Code, Texas Government Code and the proposed rule change process be reevaluated to better conform with the Sunset Commission's concerns or recommendations.

Response

The commission's rulemaking to renew the advisory committees by rule and establish dates for abolishment in rule for the advisory committees was intended to address only a part of the Sunset Advisory Commission Staff Report with Commission Decisions, Management Action recommendation 1.6 (Sunset Commission Staff Report recommendation), the recommendation that TCEQ extend advisory committees by rule. This rulemaking was not intended to fulfill the entirety of the recommendation that directed the agency to evaluate the

use of advisory committees to provide more public involvement in rulemaking and other decision-making processes. Other approaches to encourage public participation in agency decision-making include provisions of the Sunset legislation (House Bill 1505 and Senate Bill 1397, 88th Legislature, 2023), and agency rule and guidance changes that address public meetings, public notice, contested case hearings, and the availability of information on TCEQ's public website.

Comment

HCPCS commented that the proposal to establish dates of abolishment for seven advisory committees does not address the "atmosphere of distrust" identified by the Sunset Commission or adhere to their recommendation for "correctly extending advisory committees and not inadvertently letting them be abolished by function of law."

Response

The commission's rulemaking to renew the advisory committees by rule and establish dates for abolishment in rule for the advisory committees was intended to address only a part of the Sunset Commission Staff Report recommendation, the recommendation that TCEQ extend advisory committees by rule. This rulemaking was not intended to fulfill the entirety of the recommendation that sought to encourage public participation in agency decision-making. The commission does consider that the adopted amendment to §5.3 and new §5.15 appropriately renews the advisory committees by rule and establishes a date of abolishment in rule so that the advisory committees are not abolished by operation of Texas Government Code, §2110.008, conforming to the Sunset Commission Staff Report recommendation.

Comment

HCPCS commented that the proposed rule change in the future could potentially result in the advisory committees being inadvertently abolished.

Response

The adoption of new §5.15 establishes dates of abolishment for the listed advisory committees so that the advisory committees are not abolished by operation of Texas Government Code, §2110.008. Establishing the date of abolishment in rule is intended to prevent inadvertent abolishment.

Comment

HCPCS commented that using dates of abolishment, where the advisory committee must be renewed by rule, is a potential burden to the public, who may not understand how to navigate the rules process to extend the advisory committee's existence.

Response

The Commission determined that rulemaking was necessary to implement the Sunset Commission Staff Report recommendation. The adoption of new §5.15 renews the seven listed advisory committees by rule as recommended by the Sunset Commission Staff Report and establishes dates of abolishment in rule so that advisory committees are not abolished by operation of Texas Government Code, §2110.008.

Comment

HCPCS commented that the rule change process does not address the Sunset Commission's concern or recommendation of correctly extending the advisory committee.

Response

The commission determined that rulemaking was necessary to implement the Sunset Commission staff report recommendation for extending advisory committees. The adoption of new §5.15 renews the seven listed advisory committees by rule as recommended by the Sunset Commission Staff Report.

Statutory Authority

The amendment and new rule are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The adopted amendment and new rule implement TWC, §5.107 and Texas Government Code, Chapter 2110.

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) 239-2678

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CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§285.2, 285.3, 285.7, 285.32-285.34, 285.38, 285.64, and 285.91.

Amended §§285.2, 285.3, 285.7, 285.32 - 285.34, 285.38, and 285.64 are adopted *without changes* to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8898).These rules will not be republished. Amended §285.91 is adopted *with changes* to the proposed text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8898) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

On November 12, 2020, the Texas On-Site Wastewater Association (TOWA) filed a petition for rulemaking. On April 5, 2021, B&J Wakefield Services, Inc. (Wakefield) filed a petition for rulemaking. On December 16, 2020, and May 19, 2021, respectively, the commission directed the executive director (ED) to initiate rulemaking after stakeholder involvement concerning the issues raised in the petitions. The petitions requested amendments to several sections, and the ED considered the changes recommended by TOWA and Wakefield. House Bill (HB) 1680 87th Legislature, 2021, allows leased portions of federal properties to be considered separately for the purposes of the implementation

of 30 Texas Administrative Code (TAC) Chapter 285. HB 1680 does not require rulemaking; however, the ED has determined that implementing the bill language through rulemaking will clarify the requirements. This rulemaking will incorporate some, but not all, of the changes recommended by TOWA, none of the changes recommended by Wakefield, and the requirement regulating on-site sewage facilities (OSSFs) on certain leased land that is owned by the federal government. The adopted rules will update the definition of "direct communication" to ensure that, in addition to the installer and the installer's apprentice being able to communicate directly, the maintenance provider and the maintenance provider's technician will also be able to communicate directly. The updated definition will also allow any form of immediate communication rather than specifying "in person, by telephone, or by radio."

The adopted rules will clarify that: single family dwellings located on a tract of land that is ten acres or larger must adhere to all the requirements of Chapter 285 that are not specifically listed in the rule as exempt; all required tags must indicate the maintenance dates and maintenance provider information must be located outside the motor cover, control panel, or breaker box; "flows" are in reference to "hydraulic flows," and installers and owners can be parties in a contract with a maintenance provider.

The adopted rules will require risers to be installed over all inspection and cleanout ports, and all risers be at least two inches above grade. This requirement will be effective with permits issued on September 1, 2023, and later.

The adopted rules will update the language for timers used in dosing systems, and the requirement for purple fittings for reclaimed water systems.

The adopted rules will allow flexible conduit to be used in areas between the buried pipe and the control panels where rigid pipe is not feasible, with a limit of four feet of flexible conduit.

The adopted rules will clarify that the maintenance provider is contracted to provide maintenance on an OSSF. After the two-year period after installation, the homeowner is responsible for either contracting with the provider or is responsible for obtaining the necessary training to maintain the system themselves.

In addition to the above changes, the adopted rules will correct references and cross-references.

The adopted rules will implement HB 1680 by adding the requirement that if a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land.

Section by Section Discussion

§285.2, Definitions

The adopted rule will amend the definition of "direct communication" in §285.2(18) to include communication between the installer and the apprentice, and the maintenance provider and the maintenance technician. The adopted rule removes the examples of means of communication to reflect that the modernization of communication provides for better, more efficient communication.

§285.3, General Requirements

The adopted rule will amend §285.3(f)(2) to clarify that the 10-acre exception only applies to the requirements for planning materials, permits, or inspections at an OSSF at a single-family dwelling but does not allow exception from the planning, construction and installation standards as required by Chapter 285, Subchapter D. The current provision has been misinterpreted by homeowners, installers, authorized agents, and other stakeholders as meaning that single-family dwellings on 10 acres or more were exempt from the entirety of Chapter 285. This clarification will help authorized agents, homeowners, and installers better understand the regulatory requirements for large properties and correctly implement the rules, resulting in better protection of public health and the environment.

The adopted rule will also amend §285.3(f) to add paragraph (4) to incorporate the requirement from HB 1680 into the rule. The statute provides that "If a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land for purposes of this chapter, or a rule adopted under this chapter."

§285.7, Maintenance Requirements

The adopted rule to amend §285.7(e)(2) will clarify that the required weather resistant tag must be located outside of the motor cover, control panel, or breaker box. The adopted language will improve safety for homeowners as it will require easy access to the maintenance provider's contact information.

The adopted rule to amend §285.7(c) will correct the reference from "§285.7(d)(1)(A) - (E)" to "§285.7(d)(1)(A) - (F)." This correction is necessary as the provision "(F)" requires the business physical address and telephone number for the maintenance provider, which is important for the maintenance contract.

§285.32, Criteria for Sewage Treatment Systems

The adopted rule to amend §285.32(b)(1)(D) will require tank risers to be at least two inches above grade. Currently the risers on some OSSFs are installed at or below grade, which makes maintenance of the OSSF difficult. This change will allow easier access to the OSSF for maintenance. Additionally, requiring risers to be installed two inches above grade will help prevent the OSSF from being infiltrated with rainwater during rain events. This requirement will be effective with permits issued on September 1, 2023, and later.

The adopted rule to amend §285.32(c)(5)(A) will remove the descriptor for the initials "NSF". The reference to National Sanitation Foundation (NSF) is outdated.

The adopted rule to amend §285.32(d)(5) corrects the reference to read "§285.34(c)".

§285.33, Criteria for Effluent Disposal Systems

The adopted rule to amend §285.33(c)(4) corrects the reference to "§285.32(c)(5)" rather than "§285.32(c)(4)(B)".

The adopted rule to amend §285.33(d)(2)(D) will remove the descriptor for the initials "NSF." The reference to National Sanitation Foundation (NSF) is outdated.

The adopted rule to amend §285.33(d)(2)(G)(i) will remove the requirement that a commercial irrigation timer be used. Other timers that are readily available provide the same functionality and level of service.

The adopted rule to amend §285.33(d)(2)(G)(iii)(I) will remove the requirement that a commercial irrigation timer be used. Other commercially available products can provide the needed functionality and level of service.

The adopted rule to amend §285.33(d)(2)(G)(iii)(II) will remove the requirement that a commercial irrigation timer be used. Other

commercially available products provide the needed functionality and level of service.

The adopted rule to amend §285.33(d)(2)(G)(v) will remove the requirement that fittings in distribution systems for reclaimed water systems be permanently colored purple. The use of purple pipe is to clearly distinguish piping used for wastewater from other pipes, however, purple fittings are not readily available and are more expensive. The use of non-purple fittings will not affect an individual's ability to distinguish piping used for wastewater from piping used for other purposes because the pipe is still required to be purple.

§285.34, Other Requirements

The adopted rule to amend §285.34(a) will remove the descriptor for the initials "NSF." The reference to National Sanitation Foundation (NSF) is outdated.

The adopted rule to amend §285.34(b)(3) will clarify the type of flow by adding the word "hydraulic" to the provision. By adding the word "hydraulic", the rules will clearly identify the referenced flows as those within the OSSF system (wastewater generated on the site where it is treated).

The adopted rule to amend §285.34(c) will allow up to four feet of electrical wiring that is not buried to be contained in water-tight flexible electric conduit, rather than in rigid pipe. Flexible conduit will provide sufficient safety measures to prevent infiltration or other exposures of the wiring to damage. The amended language is necessary to address wire protection in tight spaces, that are typically between the buried electrical wiring and the panel(s), that sometimes make configuring rigid conduit difficult.

§285.38, Prevention of Unauthorized Access to On-Site Sewage Facilities (OSSFs)

The adopted rule to amend §285.38(c) will require all inspection and cleanout ports to have risers that extend at least two inches above grade. This change eliminates the exception that the inspection and cleanout ports of septic tanks are not required to have risers. This change will allow easier access to the OSSF for maintenance and inspection. Additionally, requiring risers to be installed two inches above grade will help prevent the OSSF from being infiltrated with rainwater during rain events. This requirement will be effective with permits issued on September 1, 2023, and later.

The deletion of §285.38(d) is necessary to prevent ambiguity in the rules since §285.38(c) will no longer exempt septic tank inspection and cleanout ports from having risers.

The subsequent provisions were relabeled accordingly.

§285.64, Duties and Responsibilities of Maintenance Providers and Maintenance Technicians.

The adopted rule to amend §285.64(a)(5) will clarify that the maintenance provider is contracted to perform maintenance on an OSSF. The adopted change will remove the ambiguity in the rule that the installer is the only person that may contract with a maintenance provider to provide maintenance on an OSSF. After the end of the two-year period after installation, the homeowner is responsible for either contracting with a maintenance provider or obtaining the necessary training to maintain the OSSF system themselves.

§285.91, Tables.

The adopted rule to amend §285.91 (2) Table 2 addresses the minimum aerobic tank treatment capacity for one and two bedroom homes with less than 1501 square feet. This correction adds these homes to the table and resolves the questions that arise as a result of smaller homes not being addressed.

The adopted rule to amend §285.91 (10) Table 10 corrects the citation regarding wells completed in accordance with the rules in 16 TAC Chapter 76 to read "§76.100(b), 76.100(e), and 76.100(f). This correction is necessary as the current reference is incorrect.

The adopted rule to amend §285.91 (10) Table 10 updates the reference from the Ra value "less than" to read the Ra value "equal to" 0.1. This correction is necessary as the current reference is incorrect. As indicated in §285.91 (1) Table 1, no reference to an Ra value less than 0.1 is given; rather, an Ra value of equal to 0.1 is given.

The adopted rule to amend §285.91 (Table 10) (Footnote 6) updates the language for timers to remove the reference to "commercial irrigation" timers to align with the updated language that is adopted in §285.33(d)(2)(G)(i). This change will remove ambiguity in the amended rules.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The purpose of this rulemaking is to update the rules in 30 TAC 285 to make them current with industry standards and practices.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not 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. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted amendments will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: "1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adopted rulemaking does not meet any of the four preced-

ing applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of OSSFs; 2) does not exceed any express requirements of state law related to the regulation of OSSFs; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not adopted solely under the general powers of the agency.

Since this adopted rulemaking does not meet the statutory definition of a "Major environmental rule" nor does it meet any of the four applicability requirements for a "Major environmental rule," this rulemaking is not subject to Texas Government Code, §2001.0225.

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

The commission evaluated this rulemaking and performed an analysis of whether the adopted rules will constitute a taking. Texas Government Code, §2007.002(5), defines a taking as either: 1) 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 Sections 17 or 19, Article I, Texas Constitution; or 2) 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% 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 determined that the adopted rules will not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the adopted rules will not affect any landowner's rights in private real property, and there are no burdens that will be imposed on private real property by the adopted rules.

Consistency with the Coastal Management Program

The ED reviewed the adopted rulemaking and found that the adoption 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 ED conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. The specific CMP policies applicable to these adopted amendments include clarifications in OSSF rules, updated language to be consistent with industry standards, require technical changes to provide easier access for maintenance of OSSFs, and implement House Bill 1680 which will allow separately leased individual parts of federal lands to be considered as separate tracts for the purposes of Chapter 285. In addition to these changes, several typographical errors and incorrect references within Chapter 285 will be corrected. Promulgation and enforcement of these adopted 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, because these adopted rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not relax current treatment or disposal standards.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

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

Public Comment

The commission offered a public hearing on January 30, 2023. The comment period closed on January 31, 2023, during which time one comment was received. The commenter was against including new requirements for risers in 30 TAC §285.38. The commenter also noted that the proposed reference in §285.91(10) was incorrect.

Response to Comments

Comment 1

An individual commented on the problems that might be created by increasing the required riser height to two inches above grade. The commenter's concerns include increased accessibility to the OSSF by unauthorized people, creating stumbling obstacles, and the difficulty of increasing riser heights on systems that are located in sidewalks, parking lots, in front of businesses, residences, and commercial operations.

Response 1

The commission appreciates the concern for safety that could be created by the proposed changes. Based on other stakeholder comments and TCEQ inspector experience, the benefits of requiring risers that extend above ground level outweigh the potential costs. Currently, the risers on some OSSFs are installed below grade, which can make maintenance of the OSSF difficult.

Two specific requirements in the current rule are meant to prevent unauthorized access. In the event that unauthorized persons remove the lid, the rules include provisions to prevent the person from falling or otherwise entering the tank. Specifically, the rules require: a riser secured with a padlock, a cover that can be removed with tools, a cover with a minimum weight of 65 pounds, or other means approved by the TCEQ Executive Director (30 TAC §285.38(c)(3)(A)); and a secondary plug, cap, or other suitable restraint system provided below the riser cap (30 TAC §285.38(c) and (30 TAC §285.38(d)).

The provision to require riser lids that extend to two inches above grade does not apply to systems that are already permitted. This provision will only apply to systems associated with new per-

mits. New permits will not authorize construction of OSSFs in sidewalks, parking lots, or within certain distances of any other structures or site improvements (site improvements include any concrete that is laid on the ground surface for any reason). No changes have been made as a result of this comment.

Comment 2

An individual commented that raising the riser two inches above grade will not prevent infiltration into an OSSF but would rather make damage to the riser more likely, increasing the potential for infiltration. The commenter stated that the law already requires that risers to be water-tight and if they are not, they should be fixed.

Response 2

The commission recognizes that increasing the minimum height of risers might lead to additional damage to risers, and that risers are already required to be water-tight; however, based on other stakeholder comments and TCEQ inspector experience, increasing the riser height to two inches above ground level will reduce the potential for infiltration from rain and surface water. The benefits of not only preventing infiltration into the OSSF but also increasing accessibility for maintenance personnel outweigh the potential risk that additional damage may be done to elevated risers. No changes were made in response to this comment.

Comment 3

An individual commented that there was an error in the amendment to a reference in §285.91 (10).

Response 3

The proposed language in §285.91 (10) Table 10 incorrectly referenced 16 TAC §76.100(a)(1) whereas Table 10 should have referenced §76.100(b), §76.100(e), and §76.100(f). Changes were made to correct this reference.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§285.2, 285.3, 285.7

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, and THSC §366.011 which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680, 87th Leg. (2021), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts are considered as separate tracts of land for purposes of on-site sewage facilities permitting.

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678

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SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §§285.32 - 285.34, 285.38

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission"s authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission"s general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

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

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Texas Commission on Environmental Quality

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SUBCHAPTER F. LICENSING AND REGISTRATION REQUIREMENTS FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, SITE EVALUATORS, MAINTENANCE PROVIDERS, AND MAINTENANCE TECHNICIANS

30 TAC §285.64

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for imple-

menting the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680 (87th Legislative Session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

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. APPENDICES

30 TAC §285.91

Statutory Authority

These amendments are adopted under the authority granted to the commission in Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; TWC, §5.013, which establishes the commission's authority over on-site sewage facilities; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules. No other statutes, articles, or codes are affected by the adoption.

This rulemaking implements House Bill 1680 (87th legislative session), codified as Texas Health and Safety Code, §366.006, which provides that certain tracts of land owned by the federal government that contain separately leased parts is considered a separate tract of land for purposes of on-site sewage facilities permitting.

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Table I. Effluent Loading Requirements Based on Soil Classification.
Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing.
Figure: 30 TAC §285.91(2)

(3) Table III. Wastewater Usage Rate.
Figure: 30 TAC §285.91(3) (No change.)

(4) Table IV. Required Testing and Reporting.
Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.
Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.
Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).
Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).
Figure: §30 TAC 285.91(8) (No change.)

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).
Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.
Figure: 30 TAC §285.91(12) (No change.)

(13) Table XIII. Disposal and Treatment Selection Criteria.
Figure: 30 TAC §285.91(13) (No change.)

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 1. CHRONIC WASTING DISEASE (CWD)

31 TAC §§65.82, 65.85, 65.88

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 25, 2023 adopted amendments to 31 TAC §§65.82, 65.85, and §65.88, concerning Disease Detection and Response, without changes to the proposed text as published

in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2048). The rules will not be republished.

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

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

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

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

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) *https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml.* Developed in 2012 in consultation with the Texas Animal Health Commission, other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the state of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are absolutely critical to containing it on the landscape. Accordingly, the first step in the department's response to CWD detections is the timely establishment of management zones around locations where detection occurs. One type of management zone is the surveillance zone (SZ), defined by rule as "a department-defined geographic area in this state within which the department has determined, using the best available science and data, that the presence of CWD could reasonably be expected." Within an SZ, the movement of live deer is subject to restrictions and the presentation of harvested deer at a department check stations is required. In addition, deer carcass movement restrictions set forth in §65.88 of Subchapter B, Division 1 apply.

The Texas Parks and Wildlife Commission recently directed staff to develop guidelines or a standard operating procedure (SOP) with respect to the establishment and duration of the various management zones, including SZs. At the January 2023 meeting of the commission, staff presented the SOP for establishing SZs in scenarios where CWD has been detected in a deer breeding facility but not at any release site associated with a breeding facility. In such cases, the department will not establish an SZ if the following can be verified: 1) the disease was detected early (i.e., it has not been in the facility long); 2) the transmission mechanism and pathway are known; 3) the facility was promptly depopulated following detection; and 4) there is no evidence that free-ranging deer populations have been compromised. If any of these criteria is not satisfied, an SZ will be established to consist of all properties that are wholly or partially located within two miles of the property containing the positive deer breeding facility.

The amendment to §65.81, concerning Surveillance Zones; Restrictions, establishes ten new surveillance zones (SZ 9-18) and modifies two existing SZs (SZ 3 and SZ 8) in response to recent detections of CWD in deer breeding facilities and on associated release sites. As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities. The commission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724). This year is the first full year of the applicability of those measures.

On August 30, 2022, the department received confirmation that a yearling white-tailed buck deer in a deer breeding facility located in Gillespie County had tested positive for CWD; additional testing at that facility resulted in another positive test confirming CWD in a male yearling white-tailed deer on September 20, 2022 and a six-year-old female on December 15, 2022. On September 12-13 and October 12, 2022, the department received confirmation that five female white-tailed deer of approximately three years of age in a deer breeding facility located in Limestone County had tested positive for CWD. In response, the department promulgated emergency rules (47 TexReg 7615) to establish surveillance zones surrounding the affected facilities. The emergency rule expired on March 4, 2023. The amendment exercises the normal rulemaking process to replace the SZs established by the emergency rule, in accordance with the SOP. The amendment also modifies existing SZ 8 in Duval County. SZ 8 was established in response to the detection of CWD in a deer breeding facility. The modification shrinks the size of the current SZ to be consistent with the SOP. In addition, the amendment eliminates current paragraph (1)(H)(iii), which imposed a date for the termination of effectiveness of the affected subparagraph. In the course of deliberating the proposal, the commission determined that the efficacy of the new SOP for managing SZ delineations would be frustrated in the SZ in Duval County were the

provision in question allowed to remain. The amendment also shrinks existing SZ 3 in Medina, Bandera, and Uvalde counties. The current SZ, along with a containment zone (CZ 3), was established in response to the detection of CWD in a number of deer breeding facilities, as well as in free-ranging deer on release sites associated with several facilities, in Medina County, and was enlarged in response to the confirmation of CWD in two more deer breeding facilities in adjacent Uvalde County (five positives (four males aged 1.5-3.4 years, one female aged 3.5 years) confirmed on March 29, 2021 at one deer breeding facility and one positive (male, 3.8 years of age) confirmed on June 15, 2021, at another deer breeding facility. The department has determined that the new SOP for SZs allows the current SZ 3 to be reduced in overall size, provided a separate SZ is created for each of the two properties in Uvalde County, which is consistent with the new SOP because deer from those facilities were not liberated to adjoining release sites and no additional positives have been detected in the current SZ surrounding those locations. Thus, the amendment essentially creates two SZs in Uvalde County. On March 10, 2023, the department received confirmation that CWD was present in a deer breeding facility in Zavala County (three buck deer approximately 2.5 years of age). On March 17, 2023, the department received confirmation that CWD was present in a deer breeding facility in Gonzales County (three female deer between the ages of 1.5 and 7.5 years of age). On March 21, 2023, the department received confirmation that CWD was present in a deer breeding facility in Hamilton County (one female deer, 3.5 years of age). On March 22, 2023, the department received confirmation that CWD was present in a deer breeding facility in Washington County (one female deer, 1.9 years of age). On April 6, 2023, the department received confirmation that CWD was present in a deer breeding facility in Frio County. The amendment establishes a SZ around each of the positive facilities (SZs 9-18, respectively).

The amendment to §65.85, concerning Mandatory Check Stations, provides for the designation of mandatory check stations for SZs at locations other than within the SZ. The current rule stipulates that the department may establish mandatory check stations in SZs. Under the new SOP for delineation of SZs, however, it could be possible for an SZ to contain no suitable public locations where the department could set up a check station. Therefore, the amendment provides for the establishment of mandatory check stations for a given SZ that are not necessarily within the SZ. The department stresses that such check stations would be sited as close to the SZ as possible and the department would undertake substantial public awareness measures as well as communication with landowners in the SZ.

The amendment to §65.88, concerning Deer Carcass Movement Restrictions, allows the head of a susceptible species taken within an SZ within which the department has not designated a mandatory check station to be transported outside of the SZ, provided such transfer is conducted immediately upon leaving the SZ where the susceptible species was taken and by the most direct route to the nearest department-designated mandatory check station. Under current rule, the head of a susceptible species taken in an SZ cannot be taken from the SZ unless accompanied by a department-issued check station receipt. The department's SOP for SZs, described earlier in this preamble, presents the possibility that the department might be unable to establish mandatory check stations within a given SZ; therefore, the amendment allows for transport in such circumstances. The amendment also prescribes acceptable methods for the disposal of heads following presentation at a check station (if the head is not being taken to a taxidermist), which consist of either 1) return to the property where the animal was harvested or 2) disposal in a landfill permitted by the Texas Commission on Environmental Quality. Because cranial and spinal tissues have the possibility of being infectious, they must be disposed of properly. Disposal at the location of harvest prevents dispersal of potentially infectious tissues to unexposed locations and landfill disposal at an accredited facility is an acceptable barrier to disease transmission.

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

One commenter opposed adoption and stated that transfer of breeder deer out of a CZ should not be allowed. The department agrees with the comment and responds that the rules as proposed and as adopted do not allow the transfer of breeder deet outside of a CZ. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeding facilities are destroying hunting opportunity. The department disagrees with the comment and responds that in the final analysis the threat to deer populations is CWD. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "CWD should be monitored to an extent and where necessary, some animals separated, quarantined and/or euthanized for the overall good of the entire Texas whitetail herd. Wholesale liquidation of herds, regulation of large areas of neighboring ranches and widescale panic is NOT the way to achieve any of your goals." The commenter further stated that "Regulating with a heavy hand without sound science or landowner cooperation is an awful and painful approach and will lead to a divide between TPWD and landowners that is unnecessary" and that "mass and unscientifically euthanizing of animals is creating panic among hunters in areas where CWD may be found." The department disagrees with the comment and responds first, that the entirety of the department's CWD management effort is aimed at protecting the state's wildlife resources from a dangerous communicable disease and represents the collaborative efforts of the department, the Texas Animal Health Commission, and numerous concerned landowners, researchers, veterinarians, and epidemiologists using the best available science. For two decades the department has conducted increasingly robust surveillance efforts to detect CWD in captive and free-ranging herds. The department notes that current Texas Animal Health Commission rules require positive facilities to be immediately placed under quarantine. The department notes that separating positive animals is not efficacious because any animal exposed to CWD directly or indirectly has the potential to contract and spread it; therefore, depopulation of breeding facilities where CWD is detected is the most effective way to prevent further spread of the disease. No changes were made as a result of the comment.

The department received 16 comments supporting adoption of the rules as proposed.

No groups or associations commented in opposition to adoption of the rules as proposed.

The Texas Deer Association, Texas Wildlife Association, Texas Chapter of the Wildlife Society, and Texas Conservation Alliance commented in favor of adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter C, which requires the commission to adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation; Subchapter E, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds, urban white-tailed deer removal, and trapping and transporting surplus white-tailed deer; Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapters R and R-1, which authorize the commission to establish the conditions of a deer management permit for white-tailed and mule deer, respectively; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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

Filed with the Office of the Secretary of State on June 14, 2023.

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Todd S. George
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For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

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

34 TAC §3.297

The Comptroller of Public Accounts adopts amendments to §3.297, concerning carriers, commercial vessels, locomotives and rolling stock, and motor vehicles, with changes to correct punctuation to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2321). The rule will be republished. The comptroller amends the section to implement the changes made to Tax Code, §160.001(2) (Definitions) by House Bill 4032, 86th Legislature, 2019 and to codify current comptroller policy regarding the taxability of components and the repair and maintenance of vessels.

The comptroller amends subsection (a)(1) "Chapter 160 boat" to update the maximum length of such a boat from 65 to 115 feet to implement House Bill 4032 and to more closely follow the statute and the definition of taxable boat in §3.741 of this title (relating to Imposition and Collection of Tax).

The comptroller amends subsection (c)(3) entitled, "component parts," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification without substantive change to the subparagraph.

The comptroller amends subsection (c)(4) entitled, "repair and maintenance," by adding the phrase "or a Chapter 160 boat that meets the definition of a commercial vessel" for clarification in accordance with STAR Accession No. 9809812L (September 15, 1998) without substantive change to the subparagraph.

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

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §151.329 (Certain Ships and Ship Equipment), §151.3291 (Boats and Boat Motors), and 160.001(2) (Definitions).

§3.297. Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles.

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

(1) Chapter 160 boat--A vessel not more than 115 feet in length, measured from the tip of the bow in a straight line to the stern, other than a canoe, kayak, rowboat, raft, punt, or other watercraft designed to be propelled only by paddle, oar, or pole. The term includes federally documented vessels, sailboats, personal watercraft, and boats designed to accommodate an outboard motor. The term does not include seaplanes. Seaplanes, and canoes, kayaks, rowboats, rafts, punts, or other watercraft designed to be propelled only by paddle, oar, or pole, are not "taxable boats" under Tax Code, Chapter 160 (Taxes On Sales And Use Of Boats And Boat Motors), but are subject to tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax).

(2) Commercial vessel--A vessel that displaces eight or more tons of fresh water before being loaded with fuel, supplies, or cargo, and that is:

(A) used exclusively and directly in a commercial or business enterprise or activity, including, but not limited to, commercial fishing; or

(B) used commercially for pleasure fishing by individuals who are paying passengers.

(3) Common carrier--A person who holds out to the general public a willingness to provide transportation of persons or property from place to place for compensation in the normal course of business.

(4) Licensed and certificated common carrier--A person authorized through issuance of a license or certificate by the appropriate United States agency or by the appropriate state agency within the United States to operate a vessel, train, motor vehicle, or pipeline as a common carrier. Certificates of inspection or safety do not authorize a person to operate as a licensed and certificated common carrier.

(5) Locomotive--A self-propelled unit of railroad equipment consisting of one or more units powered by steam, electricity, diesel electric, or other fuel, designed solely to be operated on and supported by stationary steel rails or electromagnetic guideways and to move or draw one or more units of rolling stock owned or operated by a railroad. The term includes a yard locomotive operated to perform switching functions within a single railroad yard, but does not include self-propelled roadway maintenance equipment.

(6) Marine cargo container--A container that is fully or partially enclosed; is intended for containing goods; is strong enough to be suitable for repeated use; and is specially designed to facilitate the carriage of goods by one or more modes of transportation without intermediate reloading. The term includes the accessories and equipment that are carried with the container. The term does not include trailer chassis, motor vehicles, accessories, or spare parts for motor vehicles.

(7) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; motor homes; motorcycles; trucks; truck tractors; trailers; semitrailers; house trailers or travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and truck cab/chassis. The term does not include a nonrepairable vehicle and a salvage vehicle, as defined by §3.86 of this title (relating to Destroyed and Repaired Motor Vehicles).

(8) Operating exclusively in foreign or interstate coastal commerce--Transporting persons or property between a point in Texas and a point in another state or foreign country. A vessel that travels between a point in Texas and an offshore area or fishing area on the high seas, or between two points in Texas, is not operating exclusively in foreign or interstate coastal commerce.

(9) Railroad--A form of non-highway ground transportation of persons or property in the normal course of business by means of trains solely operated on and supported by stationary steel rails or electromagnetic guideways, including, but not limited to:

(A) high speed ground transportation systems that connect metropolitan areas;

(B) commuter or other short-haul rail passenger service in a metropolitan or suburban area;

(C) narrow gauge shortline railroads, including tourist, historical, or amusement park railroads; and

(D) private industrial railroads operated on steel rails that connect directly to the national rail system of transportation, but not a private industrial railroad operated on steel rails totally inside an installation that is not connected directly to the national rail system of transportation.

(10) Rolling stock--A unit of railroad equipment that is mounted on wheels and designed to be operated in combination with one or more locomotives upon stationary steel rails or electromagnetic guideways owned or operated by a railroad. Examples include, but are not limited to, passenger coaches, baggage and mail cars, box cars, tank cars, flat cars, and gondolas. Rolling stock also includes self-propelled trackmobile rail car movers and roadway maintenance equipment. Rolling stock does not include equipment used for intra-plant transportation or other nontraditional railroad activities and that is mounted on stationary steel rails or tracks but that are not part of, or connected to, a railroad. For example, cranes operated on steel rails or tracks and used to load or unload ships are not rolling stock.

(11) Train--One or more locomotives coupled to one or more units of rolling stock that are designed to carry freight or passengers, are operated on steel rails or electromagnetic guideways, and are owned or operated by a railroad.

(12) Vessel--A watercraft, other than a seaplane on water, used, or capable of being used, for navigation and transportation of persons or property on water. The term includes a ship, boat, watercraft designed to be propelled by paddle or oar, barge, and floating dry-dock.

(b) Carriers generally.

(1) Use tax is not due on the storage or use of repair or replacement parts acquired outside of Texas and actually affixed in Texas to a self-propelled vehicle that is used by a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(2) Use tax is due on the storage or use of tangible personal property brought into Texas to be assembled into a vehicle used by a common carrier to transport persons or property from place to place, unless the tangible personal property is otherwise exempt from sales and use tax under this section.

(3) Sales tax is not due on the sale of tangible personal property to a common carrier if the tangible personal property is shipped to a point outside of Texas using the purchasing carrier's facilities under a bill of lading, and if the tangible personal property is to be used by the purchasing carrier in the conduct of its business outside of Texas.

(c) Vessels.

(1) Chapter 160 boats. The sale or use in Texas of a Chapter 160 boat is subject to boat and boat motor sales or use tax under Tax Code, Chapter 160, even if the vessel meets the definition of a commercial vessel. The lease or rental of a Chapter 160 boat is subject to limited sales, excise, and use tax under Tax Code, Chapter 151. For information concerning the imposition of the boat and boat motor sales and use tax, see §3.741 of this title (relating to Imposition and Collection of Tax).

(2) Commercial vessels. Sales or use tax is not due on the sale by the builder of a commercial vessel that is not a Chapter 160 boat.

(3) Component parts. Sales and use tax is not due on the sale or use of materials, equipment, and machinery that become component parts of a commercial vessel, a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. A component part is tangible personal property that is actually attached to and becomes a part of a commercial vessel, a marine cargo container, or a Chapter 160 boat that meets the definition of a commercial vessel. For example, items such as radios, radar equipment, navigation equipment, wenches, long-line fishing gear, and rigging equipment, that are attached to the vessel by means of bolts or brackets, or are otherwise attached to the vessel, including items required by federal or state law, are component parts. Permanent coatings such as paint and varnishes are also component parts. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, lubricants, first aid kits, tools, or polishes, waxes, glazes, or other similar temporary coatings.

(4) Repair and maintenance. Sales and use tax is not due on the labor to repair, remodel, restore, renovate, convert, or maintain a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel, or a component part of a commercial vessel or a Chapter 160 boat that meets the definition of a commercial vessel. Sales and use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service. For more information about the repair, remodeling, maintenance, and restoration of vessels that are not commercial vessels, see §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Vessels operating exclusively in foreign or interstate coastal commerce.

(A) Sales or use tax is not due on the sale of materials and consumable supplies, including items commonly known as ships' stores and sea stores, to the owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce, if the materials and consumable supplies are for use and consumption in the operation and maintenance of the vessel, or if the materials and supplies enter into and become component parts of the vessel.

(B) Operation of the vessel in a manner other than in foreign or interstate coastal commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of a vessel operating exclusively in foreign or interstate coastal commerce shall, when giving an exemption certificate, include on the certificate the title or position of the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(6) Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on the sale or use of materials and supplies purchased by a person providing stevedoring services for a vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

(d) Taxable uses of tangible personal property purchased tax free. Sales and use tax is due when tangible personal property sold, leased, or rented tax-free under a properly completed resale or exemption certificate is subsequently put to a taxable use other than the use allowed under the certificate. For more information refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(e) Rolling stock, locomotives, and trains.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the sale or use of fuel or supplies essential to the operation of locomotives and trains, including items required by federal or state regulation. Examples include, but are not limited to, telecommunication and signaling equipment, rails, ballast, cross ties, and roadbed moisture barriers. Items of tangible personal property used to construct, repair, remodel, or maintain improvements to real property such as depots, maintenance facilities, loading facilities, and storage facilities are not supplies essential to the operation of locomotives and trains.

(3) Sales or use tax is not due on the amount charged for labor or incorporated materials used to repair, remodel, maintain, or restore locomotives and rolling stock. Sales or use tax is due on the sale or use of machinery, equipment, tools, and other items used or consumed in performing the non-taxable service.

(4) Sales or use tax is not due on the sale or use of electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock. For more information, see §3.295 of this title (relating to Natural Gas and Electricity).

(5) Sales or use tax is not due on the amount charged for labor or incorporated materials, whether lump-sum or separately stated, used for the construction of new railroad tracks and roadbeds. For more information, see §3.291 of this title (relating to Contractors). Sales or use tax is not due on the separately stated sales price of incorporated materials used to repair, remodel, restore, or maintain existing railroad tracks and roadbeds. Sales and use tax is due on the sales price for labor to repair, remodel, restore, or maintain existing railroad tracks and roadbeds as nonresidential real property repair, remodeling, and restoration. For more information, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(f) Motor vehicles. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles). For information on repairs to motor vehicles, see §3.290 of this title (relating to Motor Vehicle Repair and Maintenance; Accessories and Equipment Added to Motor Vehicles; Moveable Specialized Equipment).

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) 475-2220

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SUBCHAPTER EE. BOAT AND BOAT MOTOR SALES AND USE TAX

34 TAC §3.741

The Comptroller of Public Accounts adopts amendments to §3.741, concerning imposition and collection of tax, relating to Tax Code, Chapter 160 (Taxes on Sales and Use of Boats and Boat Motors), without changes to the proposed text as published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2324). The rule will not be republished. This amendment implements House Bill 2926, 78th Legislature, 2003; House Bill 1106, 83rd Legislature, 2013; and House Bill 4032, 86th Legislature, 2019. Other amendments to the section reflect changes to existing text for consistency, clarity, and to incorporate long-standing agency policy.

The comptroller amends the section by inserting the word "sales" before the word "tax" when appropriate and replacing the terms "state" and "this state" with the term "Texas" throughout the section for uniformity with other sections of this title. The comptroller also inserts the term "taxable" before the term "boat" where appropriate to conform to the term defined in subsection (a)(12). The comptroller also replaces the term "boat" with the term "outboard" when referring to motor throughout the section to conform to the term defined in subsection (a)(13).

The comptroller amends current subsection (a), entitled "definitions," by revising certain existing definitions and by adding nine new terms in paragraphs (2), (3), (6), (7), (9), (10), (14), (15), and (18). The comptroller renumbers existing paragraphs in the subsection accordingly.

The comptroller amends subsection (a)(1) defining the term "accessories" by replacing the term "boat" with the more general term "vessel" because accessories may be attached to vessels other than taxable boats. The comptroller further amends the paragraph by adding the terms "water skis" and "tow ropes" deleted and relocated from current subsection (f)(1) and adding a statement excluding boat trailers from the definition of an accessory.

The comptroller adds a new paragraph (2) defining the term "agent of the department." The amendment is derived from the definition of the same term in Parks and Wildlife Code, §31.003(15) (Definitions).

The comptroller adds a new paragraph (3), defining the term "Application for Certificate of Title and/or Registration." The amendment derives the definition, in part, from Parks and Wildlife Code, §31.046 (Application for Certificate of Title), and §31.047 (Application; Form and Content; Fee).

The comptroller amends current paragraph (2), renumbered paragraph (4), defining the term "dealer" based on the revisions to the definition of the term in Parks and Wildlife Code, §31.003(7), and by adding a licensing requirement based on §31.041 (Duties of Dealers, Distributors, and Manufacturers; License Required).

The comptroller adds new paragraph (6) defining the term "Distributor." The definition is based on the definition of the term "distributor" in the Parks and Wildlife Code, §31.003, added by House Bill 2926.

The comptroller adds new paragraph (7) defining the term "federally documented vessel." The definition comes from information on the United States Coast Guard website at https://www.dco.uscg.mil/Our-Organization/Deputy-for-Operations-Policy-and-Capabilities-DCO-D/National-Vessel-Documentation-Center/ (April 20, 2023).

The comptroller amends current paragraph (4), renumbered paragraph (8), defining the term "manufacturer." The comptroller amends the definition to incorporate revisions to Parks and Wildlife Code, §31.003(11), and to add a licensing requirement based on §31.041.

The comptroller deletes paragraph (6) defining the term "tax assessor-collector" and adds new paragraph (9) defining the term "participating county tax assessor-collector." The comptroller defines the term as a county tax assessor-collector that has an agreement with the Texas Parks & Wildlife Department (Parks & Wildlife) to title and/or register taxable boats or outboard motors in Texas. The comptroller bases the definition on guidance from STAR Accession No. 9110L1150C10 (October 3, 1991).

The comptroller adds new paragraph (10), defining the term "registered repair facility." The definition incorporates Tax Code, §160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), added by House Bill 4032 and includes a requirement that the repair facility hold a Texas sales and use tax permit.

The comptroller amends current paragraph (5), renumbered paragraph (11), defining the term "retail sale" by incorporating the language from Tax Code, §160.001(7) (Definitions), to follow the statute more closely.

The comptroller amends current paragraph (7), renumbered paragraph (12), defining the term "taxable boat." The comptroller amends the definition of "taxable boat" by increasing the length of a taxable boat from 65 feet to 115 feet based on Tax Code, §160.001(2) revised by House Bill 4032. The comptroller further amends the paragraph to more closely follow the statutory definition of taxable boat in Tax Code, §160.001(9), by rearranging the paragraph, deleting the term "inflatable" and adding the term "punts", The comptroller also adds the word "only" when referring to the how the boat is propelled to clarify the taxability of vessels that are designed to be propelled by oars or motors, The comptroller further amends the paragraph by replacing the term "jet skis," which is a manufacturer's trade name, with the generic term "personal watercraft."

The comptroller amends current paragraph (8), renumbered paragraph (13), by changing the defined term from "taxable motor" to "outboard motor" based on Tax Code, §160.001(5) and (9), and Parks and Wildlife Code, §31.003(13). The comptroller further amends the paragraph by replacing the terms "watercraft" and "boat" with the term "vessel" used in Tax Code, §160.001(2), as amended by House Bill 4032.

The comptroller adds new paragraph (14), defining the term "temporary use permit." The comptroller derives the definition from the language in Tax Code, §160.0247 (Temporary Use Permit), added to Tax Code, Chapter 160, by House Bill 4032.

The comptroller adds new paragraph (15), defining the term "territorial boundaries of Texas." The comptroller derives the definition, in part, from the language in §3.332(c) of this title (relating to Drilling Equipment) and STAR Accession No. 200905476L (May 1, 2009).

The comptroller amends current paragraph (9), renumbered paragraph (16), defining the term "total consideration" by incorporating language from Tax Code, §160.002 (Total Consideration), and rearranging certain other terms for clarity and readability. The comptroller amends the second sentence of the paragraph by adding language explaining that total consideration includes the inventory tax due and payable by dealers under Tax Code, §23.124 (Dealer's Vessel and Outboard Motor Inventory; Value). The comptroller further amends the paragraph by including long-standing comptroller practice under STAR Accession No. 9607L1418A11 (July 11, 1996). *See* Comptroller's Decision No. 42,142 (2005) and §3.74 of this title (relating to Seller Responsibility).

The comptroller amends current paragraph (10), renumbered paragraph (17), defining the term "use" by adding the terms "taxable boat or outboard motor" and creating two examples describing "use" in new subparagraphs (A) and (B). The comptroller derives the example in subparagraph (A) from current subsection (a)(10). The comptroller derives the example in new subparagraph (B), in part, from the language in Tax Code, §160.0246, added by House Bill 4032.

The comptroller adds new paragraph (18), defining the term "vessel." The comptroller derives the definition from §3.297 of this title (relating to Carriers, Commercial Vessels, Locomotives and Rolling Stock, and Motor Vehicles), and Parks and Wildlife Code, §31.003(2).

The comptroller amends the heading for current subsection (b) entitled "general principles" to read "general principles of taxation" to better inform readers as to what the subsection contains. The comptroller amends current subsection (b)(1) by deleting the phrase "the boat and boat motor sales and use tax" and adding the title for Tax Code, Chapter 160 for clarification without substantive change.

The comptroller amends subsection (b) by adding a new paragraph (2) by relocating the second sentence from current paragraph (2) and adding the term "lease" and a statement that taxable boats or outboard motors cannot be purchased for resale. The amendment is based on Tax Code, §151.3291 (Boats and Boat Motors), and guidance from STAR Accession No. 9709824L (September 29, 1997).

The comptroller amends current subsection (b)(2), renumbered as paragraph (3), by correcting the title of Tax Code, Chapter 151, and deleting and relocating the second sentence to new paragraph (2) for clarification without substantive change. The amendment includes several minor edits to current subsection (b)(3), renumbered as paragraph (4), for consistency and clarification without substantive change.

The comptroller amends current subsection (b)(4), renumbered as paragraph (5), by inserting the titles for the Parks and Wildlife Code sections cited therein and by making several edits for clarification without substantive change. The comptroller further amends renumbered paragraph (4) and paragraph (5) by replacing the phrase "the provisions of the boat and boat motor sales and use tax" with "Tax Code, Chapter 160" for uniformity without substantive change to the paragraph.

The comptroller adds new paragraph (6) addressing the taxation of a taxable boat or outboard motor purchased at retail outside Texas and brought into Texas for use in Texas by a Texas resident or person domiciled or doing business in Texas in accordance with Tax Code, §160.022 (Use Tax). The new paragraph also adds a reference to the new resident use tax in accordance with Tax Code, §160.023 (New Resident).

The comptroller adds new paragraph (7) addressing the taxation of a boat trailer in accordance with STAR Accession No. 200109441L (September 6, 2001). The new paragraph also references §3.74 of this title and §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines).

The comptroller amends subsection (c), entitled "imposition of the tax," by creating two new subparagraphs in paragraph (1) and by moving the 6.25% tax rate referenced in current paragraph (2) to new paragraphs (1)(A) and (2)(A).

The comptroller derives new subparagraph (A) from Tax Code, §160.021 (Retail Sales Tax), and implements the amendment to Tax Code, Chapter 160, by House Bill 4032, adding Tax Code, §160.026 Limitation on Amount of Tax, limiting the amount of total sales tax due at $18,750. New subparagraph (B) restates the last two sentences in current paragraph (1) and makes several edits for clarification without substantive change.

The comptroller amends subsection (c) by deleting the language in paragraph (2) and adding new language relating to use tax due under Tax Code, §160.022. New subparagraph (A) states that tax is due on the total consideration paid or to be paid, regardless of any use or depreciation prior to entry into Texas. New subparagraph (B) makes the use tax an obligation of the person who brings the taxable boat or outboard motor into Texas in accordance with Tax Code, §160.022. New subparagraph (B) allows a credit against the Texas use tax in accordance with Tax Code, §160.025 (Credit for Other Taxes). New subparagraph (C) states that the new resident use tax imposed is $15 and is in lieu of the use tax in accordance with Tax Code, §160.023.

The comptroller further amends subsection (c)(2) by adding a new subparagraph (D) providing that use tax is not due on the use of a taxable boat or outboard motor brought into Texas if the owner of a taxable boat or outboard motor obtains a current temporary use permit. The addition of new subparagraph (D) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247. The comptroller amends subsection (c)(2) by adding a new subparagraph (E) explaining that use tax is due on the use of a taxable boat or outboard motor located within the territorial boundaries of Texas after the expiration date of the temporary use permit. The amendment makes minor changes to current subsection (c)(2), renumbered (3), for clarity without substantive change.

The comptroller amends subsection (d), entitled "payment of the tax," by creating two new subparagraphs in paragraph (1) for clarity and readability. The comptroller further amends section (d)(1) by replacing the phrase "after the completion of the seller, donor, or trader's affidavit" with the phrase "the seller and purchaser must complete an Application for Certificate of Title and/or Registration" since the comptroller and Parks & Wildlife have combined the tax affidavit required under Chapter 160 with Parks and Wildlife's Application for Certificate of Title. New subparagraph (A) is drawn from the remainder of the language in current paragraph (1). The comptroller further amends the new subparagraph by deleting and replacing the term "county tax assessor-collector" with the term "participating county tax assessor-collector" at the end of the subparagraph in accordance with STAR Accession No. 9110L1150C10.

The comptroller amends subsection (d)(2) by designating it as new subparagraph (B) of paragraph (2) and amending the new subparagraph by deleting the phrase "after the completion of the seller, donor, or trader's affidavit for the sale of a boat or boat motor" based on the amendment to subsection (d)(1). The comptroller amends new subparagraph (B) by replacing the term "affidavit" with the term "Application for Certificate of Title and/or Registration" and inserting the term "an agent of the department," and deleting and replacing the term "county tax assessor-collector" with "participating county tax assessor-collector." The amendment further revises new subparagraphs (A) and (B) by replacing the numeral "20" with the numeral "45" in accordance with House Bill 4032.

The comptroller amends subsection (d) by renumbering paragraph (2) as paragraph (3) and adding language to make the paragraph consistent with the rest of the subsection. The amendment revises the paragraph by replacing the numeral "20" with the numeral "45" in accordance with the changes made to Tax Code, §160.041 (Collection Procedure), by House Bill 4032. The comptroller amends current subsection (d) by adding a new paragraph (3) giving guidance for the transfer of a taxable boat or outboard motor due to a tax exemption, even exchange, or gift of a taxable boat or outboard motor in accordance with Tax Code, Chapter 160.

The comptroller makes minor changes to current subsection (e), entitled "Failure of tax remittance by the selling dealer," for clarity and consistency within the section without substantive change.

The comptroller amends the heading for current subsection (f), entitled "purchase of accessories/components for resale," to read "purchase of tangible personal property or accessories for resale" to conform to the contents of the amended subsection. The amendment deletes the heading for paragraph (1) because no paragraphs in the current section contain a heading. The comptroller amends the subsection by inserting the words "properly completed" before the word "resale" for consistency with other sections of this title. The amendment also replaces the term "Limited Sales, Excise, and Use Tax Act" with the term

"Tax Code, Chapter 151" for consistency and readability. The comptroller further amends current subsection (f)(1) by creating a new paragraph (2) from the second sentence in current paragraph (1) and by inserting the language "A properly completed resale certificate may be used in purchasing" for clarity and readability. The amendment also replaces the word "single" with the word "lump-sum" to be consistent with the last sentence in the new paragraph. The comptroller amends current paragraph (1) by deleting the sentence "These accessories include water skis and tow ropes" and relocating the terms "water skis and tow ropes" to subsection (a)(1) defining "accessories."

The amendment renumbers current paragraph (2) as paragraph (3), replaces the term "boat or boat motor" with the term "vessel" and replaces the phrase "boats over 65" with the phrase "vessels over 115" to be consistent with the changes made to Tax Code, §160.001, by House Bill 4032.

The comptroller adds new subsection (g), entitled, "exemptions and non-taxable transactions," which contains three new paragraphs.

The comptroller adds new paragraph (1) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use in another state or nation before any use in Texas. New paragraph (1) implements the amendment to Tax Code, Chapter 160, by House Bill 4032 which added Tax Code, §160.0246 and §160.0247 to Chapter 160. New paragraph (1) contains five subparagraphs (A) through (E).

Subparagraph (A) requires the purchaser to provide the seller with a signed written statement stating that the purchaser intends to remove the taxable boat or outboard motor from Texas for use in another state or nation by complying with either subparagraph (B), (C), or (D).

Subparagraph (B) requires the removal of the taxable boat or outboard motor from Texas within ten days of the sale in accordance with Tax Code, §160.0246(a)(1).

Subparagraph (C) requires the taxable boat or outboard motor be placed in a registered repair facility within 10 days of the date of sale and then removed from Texas within 20 days from the date the repairs, remodeling, maintenance, or restoration are completed in accordance with Tax Code, §160.0246(a)(2).

Subparagraph (D) requires the purchase of a temporary use permit within the time limits described in paragraph (1)(B) and (C) in accordance with Tax Code, §160.0246(a)(3) and (b).

Subparagraph (E) states that sales tax is due if the purchaser fails to meet the requirements of subparagraphs (A), (B), (C), or (D).

The comptroller adds new paragraph (2) concerning an exemption from sales tax for the sale of a taxable boat or outboard motor purchased in Texas for use by a governmental entity. New subparagraph (A) addresses the exemption for sales to the state of Texas, its agencies, instrumentalities, and political subdivisions in accordance with Tax Code, §160.024 (Exemption). New subparagraph (B) addresses the exemption for sales to the United States, its unincorporated agencies and instrumentalities, including instrumentalities chartered by the United States congress, such as the American Red Cross, in accordance with Tax Code, §160.024, and STAR Accession No. 9803362L (March 12, 1998). New subparagraph (C) addresses the exemption for volunteer fire departments in accordance with Tax Code, §160.0245 (Exemption for Emergency Service Organizations).

The comptroller adds new paragraph (3) concerning the nontaxable transfer of a taxable boat or outboard motor to an insurance company due to the settlement of an insurance claim or by a seller or lienholder due to a repossession of a taxable boat or outboard motor in accordance with STAR Accession No. 9306L1247F11 (June 28, 1993).

The comptroller adds new subsection (h), entitled, "refunds," which contains four paragraphs. New paragraph (1) informs the reader who may request a refund of any boat or boat motor sales and use tax paid in error in accordance with Tax Code, §111.104(b) (Refunds).

New paragraph (2) sets out the requirements for filing a refund claim in subparagraphs (A) through (D) in accordance with Tax Code, §111.104(c).

Subparagraph (A) requires that the request be in writing on comptroller's Form 57-200, Texas Claim for Refund of Boat and Boat Motor Tax. Subparagraph (B) requires that the request state the specific grounds upon which the claim is founded. Subparagraph (C) requires that the request be filed within four years from the date on which the tax was due and payable. Subparagraph (D) informs the reader that the comptroller can require a person to submit additional information to verify the refund under Tax Code, §111.004 (Power to Examine Records and Persons).

A new paragraph (3) states that the comptroller will notify a claimant if the comptroller determines that a refund claim cannot be granted, in part or in full, and the comptroller will also notify a claimant which requirements were not met in accordance with Tax Code, §111.1042 (Tax Refund: Informal Review). The amendment also explains that the claimant may request a refund hearing within 30 days of the denial of the refund in accordance with Tax Code, §111.105 (Tax Refund: Hearing). New paragraph (3) provides that a person may not refile a claim for the same transaction and for the same ground or reason as a refund claim previously denied in accordance with Tax Code, §111.107(b) (When Refund or Credit Is Permitted).

New paragraph (4) sets out the requirements for a person who intends to file suit under Tax Code, Chapter 112 (Taxpayers' Suits).

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

The comptroller adopts the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§160.001 (Definitions), 160.002 (Total Consideration), 160.021 (Retail Sales Tax), 160.022 (Use Tax), 160.023 (New Resident), 160.024 (Exemption), 160.0245 (Exemption for Emergency Service Organizations), 160.0246 (Exemption for Certain Boats and Motors Temporarily Used in This State), 160.0247 (Temporary Use Permit), 160.026 (Limitation on Amount of Tax), and 160.041 (Collection Procedure).

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

Filed with the Office of the Secretary of State on June 14, 2023.

TRD-202302162

Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Effective date: July 4, 2023
Proposal publication date: May 5, 2023
For further information, please call: (512) 475-2220

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Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General of Texas (OAG) files this notice of its intent to review Chapter 52, concerning Administration, in accordance with Texas Government Code §2001.039. An assessment will be made by the OAG as to whether the reasons for adopting or readopting the chapter continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the OAG. Comments on the review may be submitted electronically to the OAG's Human Resources Division by email to HR-Help@oag.texas.gov or by mail to Human Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments must be received within 30 days after the publication of this rule review notice to be considered.

TRD-202302199
Austin Kinghorn
General Counsel
Office of the Attorney General
Filed: June 19, 2023

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 114, Control of Air Pollution from Motor Vehicles.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 114 continue to exist.

Comments regarding suggested changes to the rules in Chapter 114 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 114. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-072-114-AI. Comments must be received by August 1, 2023. For further information, please contact Sarah Thomas, Air Quality Division, at (512) 239-4939.

TRD-202302210
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 290, Public Drinking Water.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 290 continue to exist.

Comments regarding suggested changes to the rules in Chapter 290 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 290. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-073-290-OW. Comments must be received by August 1, 2023. For further information, please contact Avery Nguyen, Water Supply Division, at (512) 239-0324.

TRD-202302209
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 330, Municipal Solid Waste.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 330 continue to exist.

Comments regarding suggested changes to the rules in Chapter 330 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 330. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-074-330-WS. Comments must be received by August 1, 2023. For further information, please contact Jarita Sepulvado, Waste Permits Division, at (512) 239-4413.

TRD-202302208
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 335 continue to exist.

Comments regarding suggested changes to the rules in Chapter 335 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 335. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: https://tceq.commentinput.com/. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-075-335-WS. Comments must be received by August 1, 2023. For further information, please contact Jarita Sepulvado, Waste Permits Division, at (512) 239-4413.

TRD-202302211
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

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Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

Pursuant to the Texas Government Code, §2001.039, the Texas Department of Agriculture (Department) has completed its review of Texas Administrative Code, Title 4, Part 1, Chapter 19, Quarantines and Noxious and Invasive Plants, Subchapter A, General Quarantine Provisions; Subchapter B, Burrowing Nematode Quarantine; Subchapter C, Camellia Flower Blight Quarantine; Subchapter D, Caribbean Fruit Fly Quarantine; Subchapter E, Date Palm Lethal Decline Quarantine; Subchapter F, Lethal Yellowing Quarantine; Subchapter G, European Brown Garden Snail Quarantine; Subchapter H, Gypsy Moth Quarantine; Subchapter I, Pine Shoot Beetle Quarantine; Subchapter J, Red Imported Fire Ant Quarantine; Subchapter K, European Corn Borer Quarantine; Subchapter L, Pecan Weevil Quarantine; Subchapter M, Sweet Potato Weevil Quarantine; Subchapter N, Karnal Bunt Quarantine; Subchapter O, West Indian Fruit Fly Quarantine; Subchapter P, Diaprepes Root Weevil Quarantine; Subchapter R, Formosan Termite Quarantine; Subchapter T, Noxious and Invasive Plants; Subchapter W, Red Palm Mite Quarantine; and Subchapter X, Citrus Greening Quarantine.

Notice of the rule review was published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6635). No public comment was received in response to this notice.

The Department finds that the legal authority and business necessity for the rules in this chapter continue to exist. The Department readopts these rules with no changes, except for §19.121 and §19.123, which are readopted with amendments. As a result, the Department proposes amendments to §19.121 and §19.123, which can be found in the Proposed Rules section of this issue.

TRD-202302167
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: June 15, 2023

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Finance Commission of Texas

Title 7, Part 1

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), comprised of Subchapter A (§§9.1 - 9.3); Subchapter B (§§9.11 - 9.23 and 9.25 - 9.39); Subchapter C (§9.71 and §9.72); and Subchapter D (§§9.81 - 9.85).

Notice of the review of Chapter 9 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2393). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 9 continue to exist. However, the department has determined that certain

revisions and other changes are appropriate and necessary. Proposed amended Chapter 9 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-202302184
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: June 16, 2023

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 10 (Contract Procedures), comprised of Subchapter A (§§10.1 - 10.21); Subchapter B (§10.30); and Subchapter C (§10.40).

Notice of the review of Chapter 10 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2393). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 10 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 10 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-202302185
Catherine Reyer
General Counsel
Finance Commission of Texas
Filed: June 16, 2023

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Texas Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments), comprised of Subchapter A (§§12.1 - 12.12); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

Notice of the review of Chapter 12 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2393). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 12 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 12 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

TRD-202302186
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 16, 2023

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On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 25 (Prepaid Funeral Contracts), comprised of Subchapter A (§§25.1 - 25.9); and Subchapter B (§§25.10 - 25.14, 25.17 - 25.19, 25.21 - 25.25, 25.31 and 25.41).

Notice of the review of Chapter 25 was published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2394). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 25 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 25 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 25 in accordance with the requirements of the Government Code, §2001.039.

TRD-202302187
Catherine Reyer
General Counsel
Texas Department of Banking
Filed: June 16, 2023

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State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1317), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039, Agency Review of Existing Rules: Chapter 105, Rules of Practice in Contested Cases, and Chapter 106, Guidelines for the Assessment of Administrative Fines. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at *www.ssb.texas.gov/texas-securities-act-board-rules.*

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Texas Government Code.

No comments were received regarding the readoption of Chapters 105 or 106.

This concludes the review of 7 TAC Chapters 105 and 106.

Issued in Austin, Texas on June 16, 2023.

TRD-202302182

Travis J. Iles
Securities Commissioner
State Securities Board
Filed: June 16, 2023

♦ ♦ ♦

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 10, Commission Meetings, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the February 10, 2023, issue of the *Texas Register* (48 TexReg 719).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 10 are required because rules in Chapter 10 implement provisions of Texas Water Code, Chapter 5, relating to the makeup of the commission and the authority of the commission to adopt any rules necessary to carry out its powers and duties under the laws of the state. Chapter 10 also implements Texas Government Code, Chapter 551, the Texas Open Meetings Act, which sets requirements for open and closed sessions of governmental entities in the State of Texas.

Public Comment

The public comment period closed on March 14, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 10 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302175
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 16, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 205, General Permits for Waste Discharges, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the February 10, 2023, issue of the *Texas Register* (48 TexReg 720).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 205 are required to codify the authority for the commission to issue general permits (GPs) for discharges of stormwater and wastewater into or adjacent to water in the state from certain facilities and activities. Chapter 205 also provides the administrative procedures for issuing GPs and authorizations under GPs.

A GP is a simplified and streamlined method for authorizing wastewater and stormwater discharges in specific circumstances, as an alternative to resource-intensive site-specific individual permits. Under Texas Water Code, §26.040, the Texas Legislature provided the TCEQ with the authority to issue general permits as a means of authorizing wastewater and stormwater discharges. The issuance of GPs is a core component of TCEQ's wastewater and stormwater permitting strategy. The use of GPs to authorize facilities with similar operations, discharges, and protective measures allows TCEQ to allocate finite permitting resources towards the review of more complex or unique sources of water pollution.

TCEQ has issued 15 GPs under Chapter 205 which authorize discharges from: construction stormwater, industrial stormwater, concentrated animal feeding operations, small municipal separate storm sewer systems, concrete batch plants, petroleum bulk storage tanks, aquaculture, livestock manure composting, quarries, facilities that use evaporation ponds, facilities that conduct hydrostatic testing, pesticide applications, activities that generate petroleum contaminated water, and water treatment plants. In recent years (2018 - 2022) the Water Quality Division has processed an average of over 11,700 GP authorizations per year. This workload does not include the number of permittees that obtain authorization without submission of an application, which is allowed by five of the GPs. If Chapter 205 was eliminated, these applications would have to be processed as site specific individual permits which would substantially increase the burden on the regulated community and on the TCEQ.

Public Comment

The public comment period closed on March 12, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 205 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302176
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 16, 2023

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 326, Medical Waste Management, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the February 10, 2023, issue of the *Texas Register* (48 TexReg 720).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons continue to exist. The rules in Chapter 326 continue to be required to implement the requirements of Texas Health and Safety Code, §361.0905, Regulation of Medical Waste. Chapter 326 covers aspects of medical waste management from medical waste facilities under the authority of the commission. This chapter applies to any person involved in any aspect of the management and control of medical waste and medical waste facilities and activities including storage, collection, handling, transportation, and processing.

Public Comment

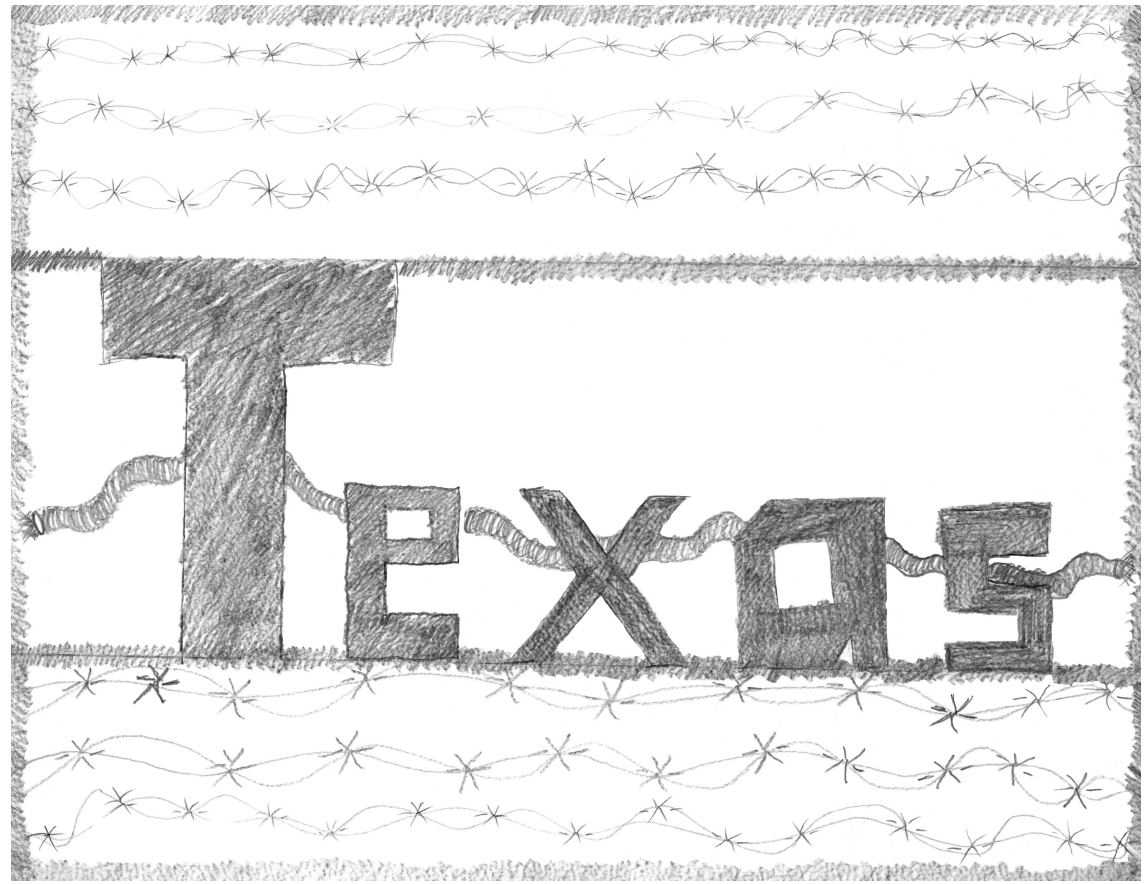
The public comment period closed on March 14, 2023. The purpose of the rule review is limited to assessing whether the reasons for the rules continue to exist. No comments were received on the reasons for the rules to continue to exist. Comments recommending substantive changes to the rules were provided by: Healthcare Waste Institute of

the National Waste & Recycling Association, Sharps Compliance, Inc., and Stericycle, Inc. The commission will consider the comments regarding amendments to the rule during future rulemakings.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 326 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202302174
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 16, 2023

♦ ♦ ♦


TEXAS

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §285.91(2)

SEPTIC TANK MINIMUM LIQUID CAPACITY

A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.

B. Calculate the minimum septic tank volume (V) as follows:

1. For Q equal to or less than 250 gal/day:
V = 750 gallons

2. For Q greater than or equal to 251 gal/day but less than or equal to 350 gal/day:
V = 1000 gallons

3. For Q greater than or equal to 351 gal/day but less than or equal to 500 gal/day:
V = 1250 gallons

4. For Q greater than or equal to 501 gal/day but less than or equal to 1000 gal/day:
V = 2.5 Q
5. For Q greater than or equal to 1001 gal/day:
V= 1,750 + 0.75Q

AEROBIC TREATMENT UNIT SIZING FOR SINGLE FAMILY RESIDENCES, COMBINED FLOWS FROM SINGLE FAMILY RESIDENCES, OR MULTI-UNIT RESIDENTIAL DEVELOPMENTS

Number of bedrooms/living area of home	Minimum Aerobic Tank Treatment Capacity (gallons per day per residential unit)
One and two bedrooms and < 1,501 sq. ft.	360
Three bedrooms and < 2,501 sq. ft. or Less than three bedrooms and 1,500 < sq. ft. < 2,501	360
Four bedrooms and < 3,501 sq. ft. or Less than four bedrooms and 2,500 < sq. ft. < 3,501	480
Five bedrooms and < 4,501 sq. ft. or Less than five bedrooms and 3,500 < sq. ft. < 4,501	600
Six bedrooms and < 5,501 sq. ft. or Less than six bedrooms and 4,500 < sq. ft. < 5,501	720

Seven bedrooms and < 7,001 sq. ft. or Less than seven bedrooms and 5,500 < sq. ft. < 7,001	840
Eight bedrooms and < 8,501 sq. ft. or Less than eight bedrooms and 7,000 < sq. ft. < 8501	960
Nine bedrooms and < 10,001 sq. ft. or Less than nine bedrooms and 8,500 < sq. ft. < 10,001	1,080
Ten bedrooms and < 11,501 sq. ft. or Less than ten bedrooms and 10,000 < sq. ft. < 11,501	1,200
For each additional bedroom above ten or 1,500 additional square feet of living area above 11,500	120

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.						
	TO					
FROM	Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells[2]	50	150	150	50	150	150
Public Water Supply Lines[2]	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10[5] except at connection to structure	No separation distances	10
Wells Completed in accordance with 16 TAC §76.100(a)(1)	50	50	50	20	50	50

Streams, Ponds, Lakes, Rivers, Creeks (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies (High Tide Only); Retention Ponds/Basin (Spillway elevation)	50	75 LPD with secondary treatment & disinfection - 50	50	20	50	25 when R_a = 0.1 75 when R_a > 0.1 (With Secondary Treatment & Disinfection - 50)
Foundations, Buildings, Surface Improvements, Property Lines, Swimming Pools, and Other Structures	5	5	5	5 Pipe may run beneath driveways and sidewalks or up to surface improvements if it is Schedule 80 pipe or sleeved in Schedule 40 pipe Pipe containing secondary effluent has no setbacks from building	No Separation Distances Except: Property lines - 20[6] Swimming Pools - 25	No Separation Distances Except[4]: Property Lines - 5

				foundations		
Underground Easements	1	1	1	1	May spray to edge of easement, but not into. Sprinkler heads must be 1 feet from easement edge	1
Overhead Easements	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder
Slopes Where Seeps may Occur and detention ponds	5	25	5	10	10	10 when $R_a = 0.1$ 25 when $R_a > 0.1$
Edwards Aquifer Recharge Features (See Chapter 213 of	50	150	50	50	150	100 when $R_a = 0.1$ 150 when $R_a > 0.1$

this title relating to Edwards Aquifer)[3]						

1. All distances measured in feet, unless otherwise indicated
2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Public Drinking Water)
3. No on-site sewage facility may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.
4. Drip irrigation lines may not be placed under foundations.
5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title.
6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by [commercial] a timer. See §285.33(d)(2)(G)(i) of this title (relating to Criteria for Effluent Disposal systems)

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Bond Program Policies and Request for Proposals Available for Public Comment

The Texas State Affordable Housing Corporation ("Corporation") has posted the draft of its 2024 Tax-Exempt Bond Program Policies and Request for Proposals. The Corporation will include written public comments received before August 11th, 2023, in its final recommendations to the Board. Comments may be submitted by email to: ddanenfelzer@tsahc.org. Comments will also be accepted by USPS at the offices of the Corporation sent to:

Texas State Affordable Housing Corporation

Attn: Development Finance Programs

6701 Shirley Avenue

Austin, Texas 78752-3517

A copy of the draft policies and request for proposals is available on the Corporation's website at:

https://www.tsahc.org/developers/tax-exempt-bonds

TRD-202302215

David Long
President
Texas State Affordable Housing Corporation
Filed: June 20, 2023

♦ ♦ ♦

Office of Consumer Credit Commissioner

Correction of Error

The Office of Consumer Credit Commission (OCCC) published an Adjustment of Maximum Fee Amounts notice in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1161). Due to an error by the OCCC, the information in the maximum fee amounts table was incorrect. The correct information follows.

Section 394.210 of the Texas Finance Code lists maximum fee amounts for debt management and debt settlement providers. Under Section 394.2101, the OCCC publishes adjustments to these amounts based on the Consumer Price Index for All Urban Consumers (1982-84).

Effective Maximum Fee Amounts: July 1, 2023 to June 30, 2024

The effective maximum fee amounts for July 1, 2023 to June 30, 2024 will be adjusted as follows:

Description	Citation	Adjusted Amount
Debt management setup fee	394.210(f)(1)	$132.00
Debt management monthly service fee	394.210(f)(2)	Lesser of $13.00 per account or $66.00
Debt settlement setup fee	394.210(g)(1)	$526.00
Debt settlement monthly service fee	394.210(g)(2)	Lesser of $13.00 per account or $66.00
Counseling or education if no debt management or settlement service provided	394.210(1)	$132.00
Fee for dishonored payment	394.210(n)	$30.00[1]

[1] The adjustment would exceed the $30 authorized by Texas Business and Commerce Code §3.506

Note: These calculations are based on comparing the reference base index for December 2011 (225.672) to the index for December 2022 (296.797). The percentage change is a 31.5170% increase, rounded to the nearest dollar. The fee descriptions above are just a summary. Providers should carefully review Section 394.210 and other applicable law to ensure that their fees are authorized.

TRD-202302166
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 15, 2023

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/26/23 - 07/02/23 is 18% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/26/23 - 07/02/23 is 18% for commercial[2] credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 07/01/23 - 07/31/23 is 8.25%.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202302218
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 20, 2023

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its principal place of business was received from American Baptist Association Credit Union, Angleton, Texas. The credit union is proposing to change its domicile to 21103 Chenango Lake Drive, Angleton, Texas 77515.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202302235
Michael S. Riepen
Commissioner
Credit Union Department
Filed: June 21, 2023

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Credit Union of Texas #1, Allen, Texas, to expand its field of membership. The proposal would permit persons who work, live, worship, or attend school within the geographic boundaries of Lamar County, Texas, to be eligible for membership in the credit union.

An application was received from Credit Union of Texas #2, Allen, Texas, to expand its field of membership. The proposal would permit persons who work, live, worship, or attend school within the geographic boundaries of Fannin County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202302234
Michael S. Riepen
Commissioner
Credit Union Department
Filed: June 21, 2023

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final actions taken on the following application:

Articles of Incorporation Change - Approved

United Savers Trust Credit Union (Houston) - See *Texas Register* dated on April 28, 2023.

TRD-202302233
Michael S. Riepen
Commissioner
Credit Union Department
Filed: June 21, 2023

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Texas Education Agency

Correction of Error Relating to Proposed Amendment to 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules, §129.1025, Adoption by Reference: Student Attendance Accounting Handbook

The Texas Education Agency (TEA) published Proposed Amendment to 19 TAC Chapter 129, Student Attendance, Subchapter AA, Commissioner's Rules, §129.1025, Adoption by Reference: Student Attendance Accounting Handbook, in the June 16, 2023 issue of the *Texas Register* (48 TexReg 3023).

Due to error by TEA, the description of changes in Section 13 of the handbook inaccurately stated that to receive career and technical education weighted funding, course periods are required to be a minimum of 45 minutes in length for a total of 8,100 minutes per school year. The phrase "for a total of 8,100 minutes per school year" should not have been included.

Issued in Austin, Texas, on June 21, 2023.

TRD-202302242
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: June 21, 2023

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the

30th day before the date on which the public comment period closes, which in this case is **August 1, 2023**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **August 1, 2023**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Braskem America, Incorporated; DOCKET NUMBER: 2022-0102-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1), 115.722(d), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2), New Source Review Permit Number 5527B, Special Conditions Number 1, Federal Operating Permit Number O1424, General Terms and Conditions and Special Terms and Conditions Numbers 1.A and 11, and Texas Health and Safety Code, §382.085(b), by failing to operate the flare with a flame present at all times and failing to prevent unauthorized emissions; PENALTY: $28,050; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $14,025; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: CROWELL, GARY L; DOCKET NUMBER: 2023-0733-WOC-E; IDENTIFIER: RN103279121; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Duran Apartment Management Incorporated; DOCKET NUMBER: 2022-0705-PWS-E; IDENTIFIER: RN101442234; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.43(d)(2), by failing to provide the facility's pressure tank with a pressure release device and an easily readable pressure gauge; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (B)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.119(b)(7), by failing to use an acceptable analytical method for disinfectant analyses; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $4,550; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(4) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2022-0080-AIR-E; IDENTIFIER: RN104198643; LOCATION: Wharton, Wharton County; TYPE OF FACILITY: natural gas pipeline segment; RULES VIOLATED: Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions; PENALTY: $8,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,312; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2021-0730-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 6819A, Special Conditions Number 1, Federal Operating Permit Number O1272, General Terms and Conditions and Special Terms and Conditions Number 31, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $25,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $12,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(6) COMPANY: H & L NEW GULF, INCORPORATED; DOCKET NUMBER: 2022-1341-UTL-E; IDENTIFIER: RN102683349; LOCATION: Boling, Wharton County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $500; ENFORCEMENT COORDINATOR: Claudia Bartley, (512) 239-1116; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: INEOS US Chemicals Company; DOCKET NUMBER: 2021-1563-AIR-E; IDENTIFIER: RN102536307; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), 116.715(a), and 122.143(4), Flexible Permit Numbers 1176 and PSDTX782, Special Conditions Number 1, Federal Operating Permit Number O1513, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $150,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $75,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: James E. Danning dba North Whispering Meadows Water and Christel L. Danning dba North Whispering Meadows Water; DOCKET NUMBER: 2022-1497-UTL-E; IDENTIFIER: RN101244879; LOCATION: Joshua, Johnson County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $625; ENFORCEMENT COORDINATOR: Samantha Duncan, (817) 588-5805; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Kinder Morgan Texas Pipeline LLC; DOCKET NUMBER: 2022-0300-AIR-E; IDENTIFIER: RN107234924; LOCATION: Yoakum, DeWitt County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 119467, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $18,750; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(10) COMPANY: MO-VAC SERVICE COMPANY; DOCKET NUMBER: 2022-0644-WQ-E; IDENTIFIER: RN104148044; LOCATION: Laredo, Webb County; TYPE OF FACILITY: waste disposal facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; PENALTY: $21,231; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $8,492; ENFORCEMENT COORDINATOR: John Thibodeaux, (409) 899-8753; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(11) COMPANY: The Consolidated Water Supply Corporation; DOCKET NUMBER: 2022-1240-UTL-E; IDENTIFIER: RN101281632; LOCATION: Crockett, Houston County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2021-0089-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9176, Special Conditions Number 1, Federal Operating Permit Number O2001, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $61,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $26,687; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202302202
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 20, 2023

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Enforcement Orders

An agreed order was adopted regarding GALAXY FOOD MART, INC. dba Fiesta II Food Mart, Docket No. 2020-1204-PST-E on June 20, 2023 assessing $4,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting William Hogan, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gina Lee Fraser a/k/a Gina Lee Fraser-Strain, Docket No. 2021-0694-PST-E on June 20, 2023 assessing $5,448 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ADI C-STORE INC dba Amigo Food Mart, Docket No. 2021-0881-PST-E on June 20, 2023 assessing $6,248 in administrative penalties with $1,249 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SWIFT BEEF COMPANY, Docket No. 2021-1100-AIR-E on June 20, 2023 assessing $6,176 in administrative penalties with $1,235 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mike Cathey dba Dumps 4 Rent and Roy Lynn Byers, Docket No. 2021-1248-MSW-E on June 20, 2023 assessing $3,750 in administrative penalties with $750 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Diamond Shamrock Refining Company, L.P., Docket No. 2021-1287-AIR-E on June 20, 2023 assessing $2,741 in administrative penalties with $548 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kevin Glass Construction LLC, Docket No. 2021-1336-AIR-E on June 20, 2023 assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Covia Holdings LLC, Docket No. 2021-1436-PWS-E on June 20, 2023 assessing $1,650 in administrative penalties with $330 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fort Bend County Municipal Utility District No. 118, Docket No. 2021-1505-MWD-E on June 20, 2023 assessing $5,250 in administrative penalties with $1,050 deferred. Information concerning any aspect of this order may be obtained by

contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Open Range Enterprises, LLC dba 4R Country Stores, Docket No. 2021-1614-PST-E on June 20, 2023 assessing $3,494 in administrative penalties with $698 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding XTO ENERGY INC., Docket No. 2022-0213-AIR-E on June 20, 2023 assessing $3,938 in administrative penalties with $787 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District 172, Docket No. 2022-0253-PWS-E on June 20, 2023 assessing $2,000 in administrative penalties with $400 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blackland Water Supply Corporation, Docket No. 2022-0294-PWS-E on June 20, 2023 assessing $1,380 in administrative penalties with $276 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INTERNET HOLDINGS, INC., Docket No. 2022-0355-PST-E on June 20, 2023 assessing $4,500 in administrative penalties with $900 deferred. Information concerning any aspect of this order may be obtained by contacting Courtney Gooris, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pilot Thomas Logistics LLC, Docket No. 2022-0688-PST-E on June 20, 2023 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PETRO HUB, LLC dba Charge Up 17, Docket No. 2022-0711-PST-E on June 20, 2023 assessing $3,344 in administrative penalties with $668 deferred. Information concerning any aspect of this order may be obtained by contacting Karolyn Kent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Integrity Delaware LLC, Docket No. 2022-1073-WQ-E on June 20, 2023 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Vulcan Construction Materials, LLC, Docket No. 2022-1077-WR-E on June 20, 2023 assessing $875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Thomas K. Rawls dba Doucette Water System and Danasa Rawls dba Doucette Water System, Docket No. 2022-1395-UTL-E on June 20, 2023 assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Opdyke West, Docket No. 2022-1423-UTL-E on June 20, 2023 assessing $625 in administrative penalties with $125 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Milam Water Supply Corporation, Docket No. 2022-1471-UTL-E on June 20, 2023 assessing $600 in administrative penalties with $120 deferred. Information concerning any aspect of this order may be obtained by contacting Christiana McCrimmon, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YES Companies EXP2, LLC, Docket No. 2022-1488-UTL-E on June 20, 2023 assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WILDCATTER REDI-MIX LLC, Docket No. 2022-1515-AIR-E on June 20, 2023 assessing $2,850 in administrative penalties with $570 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edmonson, Docket No. 2022-1522-UTL-E on June 20, 2023 assessing $575 in administrative penalties with $115 deferred. Information concerning any aspect of this order may be obtained by contacting Kaisie Hubschmitt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Covestro LLC, Docket No. 2022-1626-AIR-E on June 20, 2023 assessing $340 in administrative penalties with $68 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Carr Land Development LLC, Docket No. 2022-1638-WQ-E on June 20, 2023 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SLIDELL WATER SUPPLY CORPORATION, Docket No. 2022-1648-UTL-E on June 20, 2023 assessing $510 in administrative penalties with $102 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E S Water Utility Consolidators INC, Docket No. 2022-1649-UTL-E on June 20, 2023 assessing $510 in administrative penalties with $102 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E S Water Utility Consolidators INC, Docket No. 2022-1651-UTL-E on June 20, 2023 assessing $600 in administrative penalties with $120 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hermann Sons Life, Docket No. 2022-1712-PWS-E on June 20, 2023 assessing $550 in administrative penalties with $110 deferred. Information concerning any aspect of this order may be obtained by contacting Nick Lohret-Froio, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202302253
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

♦ ♦ ♦

Notice of an Application for a Temporary Water Use Permit Application No. 13841

Notice Issued June 16, 2023

Sims Southwest Corporation, Applicant, 21 Japhet Street., Houston, Texas 77020, seeks a temporary water use permit to divert and use not to exceed 10 acre-feet of water, within a period of one year, from a point on Buffalo Bayou (Houston Ship Channel), tributary of the San Jacinto River, San Jacinto River Basin, at a maximum diversion rate of 0.65 cfs (290 gpm), for industrial purposes in Harris County. More information on the application and how to participate in the permitting process is given below.

The application and partial fees were received on May 25, 2022. Additional information and fees were received on December 12, 14, and 16, 2022 and February 13, 17, and 22, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 8, 2023.

The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, a requirement to take reasonable measures to reduce impacts to aquatic resources due to impingement and entrainment. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by July 05, 2023. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by July 05, 2023. The Executive Director may approve the application unless a written request for a contested case hearing is filed by July 05, 2023.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRTP 13841 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov

TRD-202302251
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of an Application for an Extension of Time to Complete Construction of a Project Authorized by Water Use Permit No. 12292 Application No. 12292

Notices Issued June 09, 2023

Jewett Mine LLC, P.O. Box 915, Jewett, Texas 75846, Applicant/Permittee, seeks authorization to extend the time to complete construction of five reservoirs, located on Buffalo Creek, Bow Branch, Rena Branch, Taylor Springs Branch, and Silver Creek, Trinity River Basin for recreational, domestic and livestock purposes in Freestone and Leon Counties. More information on the application and how to participate in the permitting process is given below.

The application was received on January 26, 2023 and partial fees were received on February 6, 2023. Additional fees were received on April 18, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 26, 2023. The Executive Director has determined that the applicant has shown due diligence and justification for delay. In the event a hearing is held on this application, the Commission shall also

consider whether the authorization for the appropriation shall be forfeited for failure to demonstrate sufficient due diligence and justification for delay. The Executive Director has completed the technical review of the application and prepared a draft Order. The draft Order, if granted, would authorize the extension of time to complete construction of the five reservoirs. The application, technical memoranda and Executive Director's draft Order are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps

Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 12292 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202302244
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

♦ ♦ ♦

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 172768

APPLICATION. Ingram Readymix No 27 LLC, 3580 FM 482, New Braunfels, Texas 78132-5012 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 172768 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 112 Rancho Grande, Floresville, Wilson County, Texas 78114. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.10873640614078,29.121819665405766&level=18. This application was submitted to the TCEQ on May 11, 2023. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on June 15, 2023.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, July 27, 2023, at 6:00 p.m.

Holiday Inn Express and Suites

Rose Room

929 10th Street

Floresville, Texas 78114

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all com-

ments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ San Antonio Regional Office, located at 14250 Judson Road, San Antonio, Texas 78233-4480, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Ingram Readymix No. 27, L.L.C., 3580 Fm 482, New Braunfels, Texas 78132-5012, or by calling Mr. Gary Johnson, Vice President at (830) 625-9156.

Notice Issuance Date: June 15, 2023

TRD-202302246
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of Correction to Agreed Order Number 7

In the March 31, 2023, issue of the *Texas Register* (48 TexReg 1746), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 7, for K2C-Austin, LLC; Docket Number 2021-1327-WQ-E. The error is as submitted by the commission.

The reference to the Docket Number should be corrected to read: "2021-1327-WR-E."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202302203
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 20, 2023

♦ ♦ ♦

Notice of District Petition

Notice issued June 15, 2023

TCEQ Internal Control No. D-03172023-027; TCCI Churchill, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Ponder Farms Municipal Utility District of Denton County (District) under Local Government Code Section (§) 42.042 and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) there is one lienholder, J. Young Land & Cattle, Ltd., on the property to be included in the District and information provided indicates that the lienholder consents to the annexation of land into the District; (3) the proposed property annexation will contain approximately 275.03 acres located within Denton County; and (4) the land within the proposed property annexation is within the extraterritorial jurisdiction of the City of Denton, Texas (City). The property proposed for annexation is noncontiguous and located north of the existing District boundary. Access to the annexation tract will be by FM 2449 and Florence Road. In accordance with Texas Local Government Code §§ 42.0425 and 42.042, the Petitioner and the District submitted a petition to the City, requesting the City's consent to the annexation of land into the District. Information provided indicates that the City did not consent to the inclusion of the land into the District's area. After the 90-day period passed without receiving the City's consent to the annexation, the Petitioner submitted a petition to the City requesting the City provide water and sanitary sewer services to the proposed annexation area. The 120-day period for reaching a mutually agreeable contract expired and the information provided indicates that the Petitioner and the City have not executed a mutually agreeable contract for service. Pursuant to Texas Local Government Code § 42.042, failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the proposed annexation area into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302247
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of District Petition

Notice issued June 15, 2023

TCEQ Internal Control No. D-03172023-028; TCCI Ponder WPP, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Ponder Farms Municipal Utility District of Den-

ton County (District) under Local Government Code Section (§) 42.042 and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) there is one lienholder, Stallion Real Estate Income Fund, LLC, on the property to be included in the District and information provided indicates that the lienholder consents to the annexation of land into the proposed District; (3) the proposed property annexation will contain approximately 31.43 acres located within Denton County; and (4) the land within the proposed property annexation is within the extraterritorial jurisdiction of the Town of Ponder, Texas (Town). The property proposed for annexation is noncontiguous and located southwest of the existing District boundary. Access to the annexation tract will be by Blair Road, east of the intersection of FM 156 and Blair Road. In accordance with Texas Local Government Code §§ 42.0425 and 42.042, the Petitioner and the District submitted a petition to the Town, requesting the Town's consent to the annexation of land into the District. Information provided indicates that the Town did not consent to the inclusion of the land into the District's area. After the 90-day period passed without receiving the Town's consent to the annexation, the Petitioner submitted a petition to the Town requesting the Town provide water and sanitary sewer services to the proposed annexation area. The 120-day period for reaching a mutually agreeable contract expired and the information provided indicates that the Petitioner and the Town have not executed a mutually agreeable contract for service. Pursuant to Texas Local Government Code § 42.042, failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the proposed annexation area into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302248
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of District Petition

Notice issued June 15, 2023

TCEQ Internal Control No. D-03172023-029; TCCI Land Development, Inc., a Texas corporation, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Ponder Farms Municipal Utility District of Denton County (District) under Local Government Code Section (§) 42.042 and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) there is one lienholder, Austerra Stable Income Fund, LP, on the property to be included in the District and information provided indicates that the lienholder consents to the annexation of land into the proposed District; (3) the proposed property annexation will contain approximately 102 acres located within Denton County; and (4) the land within the proposed property annexation is within the extraterritorial jurisdiction of the Town of Ponder, Texas (Town). The property proposed for annexation is two noncontiguous tracts and located southwest of the existing District boundary. Access to the annexation tracts will be by Seaborn Road from the intersection of FM 156 and Seaborn Road.

In accordance with Texas Local Government Code §§ 42.0425 and 42.042, the Petitioner and the District submitted a petition to the Town, requesting the Town's consent to the annexation of land into the District. Information provided indicates that the Town did not consent to the inclusion of the land into the District's area. After the 90-day period passed without receiving the Town's consent to the annexation, the Petitioner submitted a petition to the Town requesting the Town provide water and sanitary sewer services to the proposed annexation area. The 120-day period for reaching a mutually agreeable contract expired and the information provided indicates that the Petitioner and the Town have not executed a mutually agreeable contract for service. Pursuant to Texas Local Government Code § 42.042, failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the proposed annexation area into the District.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition un-

less a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302249
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of District Petition

Notice issued June 15, 2023

TCEQ Internal Control No. D-03172023-030; TCCI Churchill, LLC, a Texas limited liability company, (Petitioner) filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the annexation of land into Ponder Farms Municipal Utility District of Denton County (District) under Local Government Code Section (§) 42.042 and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to all the property in the proposed annexation area to be included in the District; (2) there is one lienholder, J. Young Land & Cattle, Ltd., on the property to be included in the District and information provided indicates that the lienholder consents to the annexation of land into the proposed District; (3) the proposed property annexation will contain approximately 266 acres located within Denton County; and (4) the land within the proposed property annexation is within the extraterritorial jurisdiction of the Town of Ponder, Texas (Town). The property proposed for annexation is noncontiguous and located north of the existing District boundary. Access to the annexation tract will be by FM 2449 and Florence Road. In accordance with Texas Local Government Code §§ 42.0425 and 42.042, the Petitioner and the District submitted a petition to the Town, requesting the Town's consent to the annexation of land into the District. Information provided indicates that the Town did not consent to the inclusion of the land into the District's area. After the 90-day period passed without receiving the Town's consent to the annexation, the Petitioner submitted a petition to the Town requesting the Town provide water and sanitary sewer services to the proposed annexation area. The 120-day period for reaching a mutually agreeable contract expired and the information provided indicates that the Petitioner and the Town have not executed a mutually agreeable contract for service. Pursuant to Texas Local Government Code § 42.042, failure to execute such an agreement constitutes authorization for the Petitioner to initiate proceedings to include the proposed annexation area into the District.

INFORMATION SECTION

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The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202302250
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 1, 2023.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 1, 2023.** The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: SAM RAYBURN WATER, INC.; DOCKET NUMBER: 2022-1351-UTL-E; TCEQ ID NUMBER: RN101274165; LOCATION: Farm-to-Market Road 705, 9.5 miles south of Highway 83 near Pineland, San Augustine County; TYPE OF FACILITY: water utility; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to TCEQ for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations; PENALTY: $895; STAFF ATTORNEY: Megan L. Grace, Litigation, MC 175, (512) 239-3334; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202302205
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 20, 2023

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Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 1, 2023.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 1, 2023.** The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Juan Francisco Rodriguez; DOCKET NUMBER: 2022-0147-AIR-E; TCEQ ID NUMBER: RN111069621; LOCATION: 10050 Farm-to-Market Road 1560 North, San Antonio, Bexar County; TYPE OF FACILITY: sand and gravel processing facility; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: $5,000; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-202302204
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: June 20, 2023

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Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Double Diamond Utilities, Co. SOAH Docket No. 582-23-20421 TCEQ Docket No. 2020-0651-MWD-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - July 13, 2023

To join the Zoom meeting via computer or smart device:

https://soah-texas.zoomgov.com

Meeting ID: 161 984 0712

Password: TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

Meeting ID: 161 984 0712

Password: 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed February 27, 2023 concerning assessing administrative penalties against and requiring certain actions of Double Diamond Utilities, Co., for violations in Hill County, Texas, of: Tex. Water Code § 26.121(a)(1); 30 Texas Administrative Code §§30.350(d), 305.125(1), (4), (5), and (17), and 319.11(c); and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013786002, Definitions and Standard Permit Condition No. 2.e., Operational Requirement No. 1, Permit Condition No. 2.d., Sludge Provision Section IV.C., Effluent Limitations and Monitoring Requirements Nos. 1 and 2, Other Requirement No. 1, and Monitoring and Reporting Requirement No. 1.

The hearing will allow Double Diamond Utilities, Co., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Double Diamond Utilities, Co., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on

the date of this preliminary hearing. **Upon failure of Double Diamond Utilities, Co. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Double Diamond Utilities, Co., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code § 7.054 and ch. 26 and 30 Texas Administrative Code chs. 30, 70, 305, and 319; Tex. Water Code § 7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jim Sallans, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Sheldon Wayne, Office of Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: June 14, 2023

TRD-202302245
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Notice of Water Quality Application

The following notices was issued on June 16, 2023:

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

El Paso Electric Company, which operates Newman Power Station, has applied for a minor amendment to TCEQ Permit No. WQ0000836000 to authorize the ability to retain management of wastewater via evaporation and irrigation and management of wastewater via evaporation only when Zero Liquid Discharge Phase II is fully operational or irrigation tracts are no longer available for use. The existing permit authorizes the disposal of cooling tower blowdown, low volume wastes, metal cleaning wastes, and stormwater at a daily average flow not exceed 1.728 MGD via evaporation or irrigation of non-public access acreage north of the plant consisting of 793 acres. This permit will not authorize discharge of pollutants into water in the state. The facility and land application site are located at 4900 Stan Roberts Sr. Avenue, El Paso County, Texas 79934.

The following notice does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 WITHIN (30) DAYS FROM THE DATE THIS NOTICE IS ISSUED.

INFORMATION SECTION

Azteca Milling, L.P., which operates Dawn Corn Milling Facility, has applied for a minor amendment to TCEQ Permit No. WQ0004052000 to authorize reduction of effluent land application area required from 219-acres to 165-acres. The existing permit authorizes the disposal of process wastewater and washwater generated from cooking and washing corn at a daily average flow not exceed 320,000 gallons per day via irrigation of 219 acres. This permit will not authorize discharge of pollutants into water in the state. The facility and land application site are located at 4819 Farm-to-Market (FM) 809 Road, Deaf Smith County, Texas 79025.

TRD-202302252
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2023

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Tax Relief for Pollution Control Property Advisory Committee Request for Nominations

The Texas Commission on Environmental Quality (TCEQ) is currently accepting nominations for six members to the Tax Relief for Pollution Control Property Advisory Committee (advisory committee) to serve four-year terms, beginning January 1, 2024 through December 31, 2027.

The following affiliation positions need to be filled on the advisory committee: three industry representatives, one taxing unit representative, one environmental group representative, and one representative from a school or junior college district in which property is located that is or was previously subject to an exemption under Texas Tax Code, §11.31. Current advisory committee members whose terms are expiring may apply for reappointment and must apply to be considered for reappointment.

In 1993, Texas voters approved Proposition 2 (Prop 2), amending the Texas Constitution to authorize the Texas Legislature to exempt from ad valorem taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The Texas Legislature implemented Prop 2 by enacting Texas Tax Code, §11.31. The TCEQ adopted 30 Texas Administrative Code

Chapter 17, implementing Texas Tax Code, §11.31 and establishing the procedures for obtaining a "positive use determination" under the Tax Relief for Pollution Control Property Program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to meet or exceed federal, state, or local environmental rules or regulations.

In 2009, Texas Tax Code, §11.31 was amended to require the TCEQ to form a permanent advisory committee to make recommendations to the TCEQ commissioners on matters relating to property tax exemptions for pollution control property. TCEQ commissioners appoint advisory committee members to serve four-year staggered terms.

The nomination form and instructions are provided on the TCEQ's website at *https://www.tceq.texas.gov/airquality/taxrelief/advisory_group.html.* Completed nomination forms must be submitted to the TCEQ by 5:00 p.m. CDT on July 31, 2023. Nominations received after that date will only be considered if there are insufficient qualified nominees. Individuals may nominate themselves or someone else to the advisory committee, but the TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee nomination process should be directed by phone to Elizabeth Sartain of the Tax Relief Program at (512) 239-3933 or by email to *txrelief@tceq.texas.gov.*

TRD-202302207
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 20, 2023

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 11, 2023 to June 16, 2023. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.25, 30.32, and 30.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 23, 2023. The public comment period for this project will close at 5:00 p.m. on Sunday, July 23, 2023.

FEDERAL AGENCY ACTIONS:

Applicant: City of Port Aransas

Location: The project site is located in a manmade ditch adjacent to Corpus Christi Bay, approximately 8.9 miles southeast of Aransas Pass, within Nueces County, Texas.

Latitude and Longitude: 27.778934, -97.106960

Project Description: The applicant proposes to discharge approximately 290 cubic yards of clean fill and box culvert system into 0.27 acre (803 linear feet) of manmade intermittent ditch. The applicant plans to install a 7-foot by 3-foot box culvert. Once installed, the box culvert is anticipated to improve the flow of stormwater conveyed from State Highway (SH) 361 and adjacently located residential developments. The proposed project would permanently impact 0.27 acre (803 linear feet) of a manmade intermittent ditch. The ditch currently outfalls into a large manmade canal/lake with connectivity to Corpus Christi Bay through existing piping structures that cross underneath the waterbody's embankment. During construction, the existing pipes would be removed and replaced with a 7-foot by 3-foot box culvert outfall structure. The proposed headwall associated with the outfall structure would match the current grade of the embankment system along the manmade canal/lake and impacts below the ordinary high water mark (OHWM) are not anticipated to occur.

The applicant proposed to mitigate for the proposed impacts by utilizing a permittee responsible mitigation (PRM) solution, prepared by Delta Land Services to offset the impacts resulting in a chance of function. The applicant would compensate for the conversion (fill) of 0.27 acres of waterbody (manmade ditch).

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2023-00181. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 23-1296-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202302243
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: June 21, 2023

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Texas Health and Human Services Commission

Public Notice - Texas State Plan for Medical Assistance Amendment

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments will be effective July 1, 2023.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physician Services

The proposed amendment is estimated to result in an annual aggregate expenditure of $0 for federal fiscal year (FFY) 2023, consisting of $0 in federal funds and $0 in state general revenue. For FFY 2024, the estimated annual aggregate expenditure is $0 consisting of $0 in federal funds and $0 in state general revenue. For FFY 2025, the estimated annual aggregate expenditure is $0 consisting of $0 in federal funds and $0 in state general revenue.

Further detail on specific reimbursement rates and percentage changes were made available on the HHSC Provider Finance website under the proposed effective date at: https://pfd.hhs.texas.gov/rate-packets.

Rate Hearing.

A Rate Hearing was conducted in person and online on May 19, 2023. Information about the proposed rate changes and hearings was published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2159). Additional information and the notice of hearings can be found at https://www.sos.state.tx.us/texreg/index.shtml. Archived recordings of the hearings can be found at https://www.hhs.texas.gov/about/meetings-events.

Copy of Proposed Amendment.

Interested parties may obtain additional information and/or a free copy of the proposed amendment by contacting Nicole Hotchkiss, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Texas Department of Aging and Disability Services).

Written Comments.

Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Provider Finance Department

Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Provider Finance Department

North Austin Complex

Mail Code H-400

4601 W. Guadalupe St.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Provider Finance at (512) 730-7475

Email

PFDAcuteCare@hhs.texas.gov

Preferred Communication.

For quickest response, please use e-mail or phone, if possible, for communication with HHSC related to this state plan amendment.

TRD-202302206

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: June 20, 2023

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Texas Department of Insurance

Company Licensing

Application for incorporation in the state of Texas for Meanwhile Life Insurance Company, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202302254

Justin Beam

Chief Clerk

Texas Department of Insurance

Filed: June 21, 2023

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North Central Texas Council of Governments

Request for Proposals for DART Silver Line TOD Parking Study

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms for the DART Silver Line TOD Parking Study. NCTCOG is coordinating with local governments to develop a Dallas Area Rapid Transit (DART) Silver Line Transit Oriented Development (TOD) Corridor Plan with a focus on increasing future Silver Line rail ridership. A key element of the DART Silver Line TOD Corridor Plan is a parking study, which will use local data collected in this project and known best practices to recommend parking policy and management supporting more TOD around the Silver Line. The consultant will first conduct parking utilization counts at existing developments around various Silver Line rail stations for multi-day periods. The consultant will compare these counts to local parking requirements in zoning. Additionally, parking management best practice information applicable to the Silver Line corridor's future and existing development will be gathered. This project will result in a final report for Silver Line local governments using the collected parking use data, reviewed zoning, and best practices examples to create recommendations for local parking policies and management practices for ongoing TOD in the Silver Line corridor.

Proposals must be received in-hand no later than **5:00 p.m., Central Time,** on **Friday, July 28, 2023,** to Travis Liska, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on **Friday, June 30, 2023.**

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202302217

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 20, 2023

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Request for Proposals - Hosted Website Solution for www.TryParkingIt.com, the Regional Commute Tracking, Ride-Matching, and Commuter Reward System Website for the North Central Texas Council of Governments

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from firms for a hosted website solution for NCTCOG's existing commute tracking and ride-matching website and app, www.tryparkingit.com. The hosted website solution will allow commuters in the North Central Texas region to record information about alternative commute trips and locate ride-matches for traditional carpools and vanpools, along with transit, biking and walking partner matches. The hosted website solution will also offer sustainable incentives to motivate commuters to increase their use and reporting of alternative commutes.

Proposals must be received no later than 5:00 p.m., Central Time, on **Friday, July 14, 2023,** to Sonya Landrum, Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 and electronic submissions to TransRFPs@nctcog.org. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, June 30, 2023.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-202302236
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 21, 2023

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Public Utility Commission of Texas

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 9, 2023, to relinquish designation as an eligible telecommunications carrier and eligible telecommunications provider under 16 Texas Administrative Code §26.417 and §26.418.

Docket Title and Number: Application of Mid-Tex Cellular, Ltd. to Relinquish its Eligible Telecommunications Provider and Eligible Telecommunications Carrier Designations, Docket Number 55133.

The Application: Mid-Tex Cellular, Limited requests to relinquish its eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) designation in Texas.

Persons who wish to file a motion to intervene or to comment on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 55133.

TRD-202302163
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: June 14, 2023

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Texas Workforce Commission

Request for Comment Regarding the Management Fee Rate Charged by WorkQuest

Notice is hereby given that the Texas Workforce Commission (Commission) will review and make a decision on the management fee rate charged by the central nonprofit agency, WorkQuest, for its services to the community rehabilitation programs and operation of the State Use Program for Fiscal Year 2024 as required by Texas Human Resources Code, §122.019(e). This review will be considered by the Commission no earlier than Tuesday, September 5, 2023, in a duly posted Open Meeting. WorkQuest has requested that the Commission set the Fiscal Year 2024 management fee rate at 6% of the sales price for products, 6% of the contract price for services, and 5% of the contract price for temporary staffing services. The Commission seeks public comment on WorkQuest's management fee rate request as required by Texas Human Resources Code, §122.030.

Comments should be submitted in writing on or before Wednesday, August 30, 2023, to Kelvin Moore at Texas Workforce Commission, 1117 Trinity, Room 214T, Austin, Texas 78711, or via email to *purchasingfrompeoplewithdisabilities@twc.texas.gov.*

TRD-202302200
Les Trobman
General Counsel
Texas Workforce Commission
Filed: June 19, 2023

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Request for Comment Regarding the Services Performed by WorkQuest

Notice is hereby given that the Texas Workforce Commission (Commission) intends to review the services provided by the central nonprofit agency, WorkQuest, for Fiscal Year 2023 as required by Section 122.019(c) of the Texas Human Resources Code and 40 Texas Administrative Code §806.31(d). The Commission will review the performance of WorkQuest to determine whether that agency's performance complied with all applicable requirements.

The Commission requests that interested parties submit comments regarding the services of WorkQuest in its operation of the State Use Program, under Texas Human Resources Code, §122.019 and 40 Texas Administrative Code Chapter 806, Subchapter C, no later than Thursday, August 31, 2023. Comments shall be submitted to Kelvin Moore at Texas Workforce Commission, 1117 Trinity, Room 214T, Austin, Texas 78711, or via email to: *purchasingfrompeoplewithdisabilities@twc.texas.gov.*

TRD-202302213
Les Trobman
General Counsel
Texas Workforce Commission
Filed: June 20, 2023

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Texas Workforce Investment Council

Texas Workforce System Strategic Plan - Fiscal Year 2024 - Fiscal Year 2031

The Texas Workforce Investment Council (Council) is pleased to provide a draft of the strategic plan for the Texas workforce system for public review and comment. Following recommendation by the Strategic Planning Committee, the plan was approved for posting by the Council at its meeting on June 16, 2023. Written comments may be sent to *twic.mail@gov.texas.gov* and will be accepted through close of business on July 31, 2023.

Note to Reviewers:

Some of the less formal performance measures that are referenced throughout the plan are still in the process of being finalized with agency partners. The final workforce system strategic plan may include performance measures other than those found in the posted version of the plan.

You may access the plan on the Council's website at: https://gov.texas.gov/uploads/files/organization/twic/texas_workforce_system_strategic_plan.pdf

TRD-202302212
Lee Rector
Director
Texas Workforce Investment Council
Filed: June 20, 2023

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 48 (2023) is cited as follows: 48 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "48 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 48 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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