# ADOPTED RULES

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

## TITLE 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 15. EGG LAW

The Texas Department of Agriculture (Department) adopts amendments to 4 Texas Administrative Code, Chapter 15, Egg Law, §15.1, Definitions; §15.2, Who Must Obtain a License; §15.3, Application Required; §15.4, Fees; §15.5, Special Fees; §15.7, Storage Requirements; §15.8, Labeling Requirements; §15.9, Reports and Records; §15.10, Inspections; §15.11, Retail Egg Replacement; §15.12, Violations; and §15.13, Penalties, and the repeal of §15.6, Standards. The amendments and repeal are adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8182) and will not be republished.

The Department identified the need for the amendments and repeal during its rule review of Texas Administrative Code, Title 4, Chapter 15, conducted pursuant to Texas Government Code §2001.039, the adoption of which can be found in the Review of Agency Rules section of the December 16, 2022, issue of the *Texas Register* (47 TexReg 8284).

The amendments to §15.1 add language to the definition for "advertisement" to account for online and similar types of advertisements; remove unnecessary definitions; add a definition for "Code" for ease of reference; replace references to "dealer/wholesaler" with "dealer-wholesaler" to conform with Texas Agriculture Code (Code), Chapter 132; clarify internal references within this chapter; and make editorial and grammatical changes.

The amendments to §15.2 make grammatical changes to improve the rule's readability.

The amendments to §15.3 clarify internal references within this chapter, revise a statutory reference to the Code to utilize a newly defined term, and correct a grammatical error.

The amendments to §§15.4 and 15.5 replace references to "dealer/wholesaler" with "dealer-wholesaler" to conform with Chapter 132 of the Code, clarify internal references within this chapter, and remove superfluous language concerning conflicts with Chapter 2, Subchapter B of Title 4, Part 1.

The repeal of §15.6 is adopted because the rule's provisions unnecessarily restate §132.004 of the Code.

The amendments to §15.7 update a reference to the United States Food and Drug Administration (FDA), change refrigeration temperature standards to those adopted by either the United States Department of Agriculture or the FDA, clarify internal references within this chapter, and change references to "the Texas Egg Law" to "Chapter 132 of the Code."

The amendments to §15.8 add a labeling requirement for commercially printed cartons to conform the rule's labeling requirements to those contained in Section 132.044 of the Code, replace references to "dealer/wholesaler" with "dealer-wholesaler" to conform with Chapter 132 of the Code, and make editorial changes to language to improve the rule's readability.

The amendments to §15.9 make references to types of licensees uniform throughout the section, replace references to "dealer/wholesalers" with "dealer-wholesalers" to conform with Chapter 132 of the Code, change references from "State of Texas" to "this state" as the term "this state" is mainly used in this chapter, clarify internal references within this chapter, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The amendments to §15.10 add the availability of records to inspection requirements to account for recordkeeping requirements in Section 132.061 of the Code and make editorial changes to language improve the rule's readability.

The amendments to §15.11 add the term, "containers," to egg replacement requirements to clearly describe the broad applicability of these requirements to all types of containers, add a reference to the specific labeling requirements in this chapter, and update a cross reference to the Texas Department of State Health Services' general rules for retail food establishments.

The amendments to §15.12 ensure labeling requirements apply to both egg cartons and containers, clarify labeling requirements, include online and related advertisements within advertising requirements, and make grammatical and editorial changes to improve the rule's readability.

The amendments to §15.13 change a reference to the Code to utilize a newly defined term in §15.1.

PUBLIC COMMENT

Comment: During the 30-day public comment period, the Department received one comment from the Farm and Ranch Freedom Alliance (FARFA).

FARFA requested that the Department "remove the unnecessary, burdensome provision that requires producers who sell eggs from their own flocks to obtain a license, file monthly reports, and pay fees to [the Department]" by deleting §15.1(12)(B).

Response: The Department has carefully considered FARFA's comment, but views the comment as outside of the scope of the proposed amendments. The proposed amendments addressed by FARFA's comment are nonsubstantive and editorial in nature. During the course of its review of these rules, the Depart-

ment has considered the applicable legal authority and business necessity for the rules in this chapter. Because the proposed amendments do not expand or otherwise affect the scope of the existing requirement for licensure with which FARFA disagrees, the Department declines to delete §15.1(12)(B), as requested by FARFA's comment.

**4 TAC §§15.1 - 15.5, 15.7 - 15.13**

The amendments are adopted under Section 132.003 of the Code, which allows the Department to adopt rules necessary to administer Chapter 132 of the Code.

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301043
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: March 30, 2023
Proposal publication date: December 16, 2022
For further information, please call: (512) 936-9360

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**4 TAC §15.6**

The repeal is adopted under Section 132.003 of the Code, which allows the Department to adopt rules necessary to administer Chapter 132 of the Code.

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301044
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Effective date: March 30, 2023
Proposal publication date: December 16, 2022
For further information, please call: (512) 936-9360

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 1. ADMINISTRATION
### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

**10 TAC §1.23**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8410). The rule will not be republished. The purpose of the adopted repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2023 SLIHP.

The Department has analyzed this adopted rulemaking and the analysis is described below for each category of analysis performed.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the adopted repeal would be in effect:

1. The adopted repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2023 SLIHP, as required by Tex. Gov't Code 2306.0723.

2. The adopted repeal does not require a change in work that would require the creation of new employee positions, nor is the adopted repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The adopted repeal does not require additional future legislative appropriations.

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

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

6. The adopted action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2023 SLIHP.

7. The adopted repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The adopted repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this adopted repeal and determined that the adopted repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The adopted repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the adopted repeal as to its possible effects on local economies and has determined that for the first five years the adopted repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson, has determined that, for each year of the first five years the adopted repeal is in effect,

the public benefit anticipated as a result of the repealed section would be an updated more germane rule that will adopt by reference the 2023 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The 30 day public comment period for the rule was held between Monday, December 19, 2022, to Tuesday, January 17, 2023. The public comment period for the draft 2023 SLIHP was also held between December 19, 2022 and January 17, 2023. A public hearing for the draft 2023 SLIHP was held on January 11, 2023, in Austin, Texas. Written comments were accepted by mail or email. While the Department received public comment on the draft 2023 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2023 SLIHP and the final order adopting the repeal on March 9, 2023.

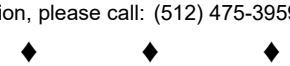
STATUTORY AUTHORITY. The adopted repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301046
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 475-3959



## 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts the new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8411). The rule will not be republished. The purpose of the adopted new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2023 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2023 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2021, through August 31, 2022).

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it is exempt under item (c)(9) because it is necessary to implement legislation. Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report. Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule. This rule provides for adherence to that statutory requirement. Further no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this adopted rulemaking and the analysis is described below for each category of analysis performed.

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

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the adopted new rule would be in effect:

1. The adopted new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2023 SLIHP, as required by Tex. Gov't Code 2306.0723.

2. The adopted new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The adopted new rule changes do not require additional future legislative appropriations.

4. The adopted new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The adopted new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

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

7. The adopted new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The adopted new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this adopted rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the adopted rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the adopted rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the adopted rule will adopt by reference the 2023 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The adopted rule does not contem-

plate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the adopted rule has no economic effect on local employment because the adopted rule will adopt by reference the 2023 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the adopted rule will adopt by reference the 2023 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2023 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2023 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed new rule was held between Monday, December 19, 2022 and Tuesday, January 17, 2023. The public comment period for the draft 2023 SLIHP was also held between December 19, 2022 and January 17, 2023. A public hearing for the draft 2023 SLIHP was held on January 11, 2023, in Austin, Texas. Written comments were accepted by email and mail. While the Department received public comment on the draft 2023 SLIHP, no comments were received specifically on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2023 SLIHP and the final order adopting the new rule on March 9, 2023.

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

Except as described herein the adopted new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301047

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 30, 2023
Proposal publication date: December 23, 2022
For further information, please call: (512) 475-3959

## SUBCHAPTER B. ACCESSIBILITY AND REASONABLE ACCOMMODATIONS

### 10 TAC §§1.201 - 1.207

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, §§1.201 - 1.207 without changes to the text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 267). The repeal is adopted without changes and will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

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

1. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing Accessibility and Reasonable Accommodations.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for accessibility and accommodation activity.

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

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate

or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held January 27, 2023, to February 27, 2023, to receive input on the repealed section and no comment was received.

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

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

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301035
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 30, 2023
Proposal publication date: January 27, 2023
For further information, please call: (512) 475-3959

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## 10 TAC §§1.201 - 1.207

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations with changes to the text as published in the January 27, 2023, issue of the *Texas Register* (48 TexReg 268). The rules will be republished. The purpose of the new section is to make changes updating the rule for federal guidance that has been released since the last rulemaking, adding several new programs to the rule that were not previously programs overseen by the Department, bringing the rule up to date and streamlining requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

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

Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule, which makes changes to the rules that govern accessibility and reasonable accommodations.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

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

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

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participate in such programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for the handling of reasonable accommodations and accessibility.

3. The Department has determined that because this rule relates only to a revision to a rule subrecipients/owners and tenants of an existing program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the processes used in existing multifamily properties and other portfolio subrecipients; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENT. The Department accepted public comment from January 27, 2023, through February 27, 2023 and no comment was received.

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

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

*§1.201. Purpose.*

(a) The purpose of this subchapter is to establish a framework for informing compliance with the requirements of Tex. Gov't Code §§2306.6722, 2306.6725, and 2306.6730, and the requirements of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act (Section 504) and the Fair Housing Act for Recipients of awards from the Texas Department of Housing and Community Affairs (the Department) including but not limited to:

(1) Community Services Block Grant;

(2) Low Income Home Energy Assistance Program (LIHEAP) (including the two programs utilizing this funding source: the LIHEAP Weatherization Assistance Program and the Comprehensive Energy Assistance Program);

(3) Emergency Solutions Grant (ESG);

(4) Texas Housing Trust Fund;

(5) Low Income Housing Tax Credit, including Exchange;

(6) Multifamily Bond Programs (Bond);

(7) National Housing Trust Fund (NHTF);

(8) Neighborhood Stabilization Program (NSP);

(9) HOME;

(10) TCAP;

(11) TCAP- Returned Funds (TCAP-RF);

(12) Section 8;

(13) Department of Energy Weatherization Assistance Program;

(14) Homeless Housing and Services Program (HHSP);

(15) Ending Homelessness Fund (EH);

(16) Community Development Block Grant (CDBG);

(17) Community Development Block Grant - CARES Act (CDBG-CV);

(18) 811 Project Rental Assistance (811 PRA);

(19) Emergency Rental Assistance (ERA);

(20) Department of Energy Weatherization Program (DOE WAP); and

(21) HOME American Rescue Plan (HOME-ARP).

(b) Unless otherwise indicated in the applicable notice of funding availability or required by contract, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

*§1.202. Definitions.*

Capitalized words in this subchapter have the meaning assigned in the specific chapter and rules of the title that govern the program associated with the matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this subchapter:

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard.

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act.

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project in-

cludes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site.

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

(A) Participate fully in a program;

(B) Take advantage of a service;

(C) Live in a dwelling; or

(D) Use and enjoy a dwelling.

(7) Recipient--Includes a Subrecipient or Administrator and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom assistance or an award is extended for any program or activity directly or through another Recipient, including any successor, assignee, or transferee of a Recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

*§1.203. General Requirements and Effect of Non Compliance.*

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with Section 504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility, and reasonable accommodations under Section 504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include, but are not limited to:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Tex. Gov't Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment, as further outlined in this title.

*§1.204. Reasonable Accommodations.*

(a) Applicability. This policy relates to a request for Reasonable Accommodations made by an applicant or participant of a Department program to a Recipient, or made by an applicant or occupant to a property funded by the Department to the property. The policy regarding a request for Reasonable Accommodation by the Department is found at 10 TAC §1.1 of this chapter.

(b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.

(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) Timely received the request and recorded it;

(B) Took into consideration how action on the request would impact the person making the request; and

(C) Engaged in communication with the requestor to understand the nature of their request and whether there was a reasonable way to make an accommodation.

(2) If the person responsible for responding to a request for an accommodation needs assistance or clarification as to how the requirement may apply to their program or property they should contact the Compliance Division immediately to discuss the matter. The Compliance Division cannot provide legal advice or direct the person to respond in any specific manner, but they can, in some instances, point to appropriate federal guidance or other resources such as the Texas Workforce Commission Civil Rights Division. A person who contacts the Compliance Division or anyone else for such reasons should document such contact in their files because the process of obtaining guidance may impact the timeliness of their response.

(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than 14 calendar days.

(c) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Examples when it would not be reasonable to wait 14 calendar days to provide a response include but are not limited to: moving the due date for rent to coincide with the date the requestor receives their social security disability check; allowing a service animal in an emergency shelter in spite of a no pets policy; or assisting an applicant with a Disability that prevents them from writing legibly when they request help filling out an program or project application. Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation.

(e) When a participant, applicant, or occupant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the

Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a tax credit or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001, must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice or the U.S. Department of Housing and Urban Development with a de minimis cost (e.g., assigned existing parking spot and no deposit for service/assistance animals).

(f) A Recipient may not charge a fee, deposit, or place conditions on a participant, occupant, or applicant in exchange for making the accommodation.

(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited to compliance with a particular accessible code specification. However, the Recipient must still follow accessible code specifications, as identified in its Contract or LURA.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient must give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the Reasonable Accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's Disability-related needs.

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

*(i)* payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

*(ii)* the approved amount must generally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

*(iii)* a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing Alterations under this subsection is some evidence that the Alteration would be an undue financial and administrative burden.

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation.

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a Reasonable Accommodation.

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member, as a Reasonable Accommodation.

(h) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(i) Examples of reasonable accommodations, while not exhaustive, include moving the due date for rent to coincide with the date the requestor receives their social security disability check; providing a designated accessible parking space from existing parking spaces; creating an accessible parking space to accommodate a wheelchair-equipped van; allowing a service or support animal or animals in spite of a no pets policy; modifying door knobs to levers; providing assistance in filling out a program application for the activity or unit; in the case of a service provider providing computer lab classes with laptops, providing a loan of the laptop computer with the training software; in the case of a weatherization provider serving a family with a child with asthma, seeing if an alternative sealant could be used when the sealant typically used may trigger an asthma attack; installing grab bars; providing an accessible entrance to a resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so; and providing a ramp in excess of usual specifications for such alternations to accommodate a scooter type wheelchair, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(j) Recipients must follow federal and state regulations regarding service/assistance animals. A housing provider may not require an applicant, participant, or occupant to pay a pet deposit if the animal is a service/assistance animal.

*§1.205. Compliance with the Fair Housing Act.*

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991, must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

(c) The Department requires compliance with HUD's Fair Housing Act Design Manual, including the ability to claim exemptions or exceptions provided for therein.

*§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.*

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 and not otherwise modified in this subchapter:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) All Multifamily Housing Developments that submit a full application for funding after January 1, 2014.

(c) Recipients of CDBG, CDBG-CV, ESG, EH, HHSP, and HOME-ARP (for Non-Congregate Shelter) funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 and not otherwise modified in this subchapter.

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

*§1.207. General Requirements for Multifamily Housing Developments.*

(a) All Units that are accessible to persons with mobility impairments must be on an Accessible Route.

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with Disabilities and persons without Disabilities to interact to the fullest extent possible). This means the distribution will provide individuals requiring accessible units with a choice of location, layout, and price that is substantially equivalent to the choice available to others. Distribution of accessible units may be further described in federal law, regulation, or governing Rules in this Title. To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the Development and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

(c) All Multifamily Housing Developments that submit full applications after January 1, 2014, must have a minimum of 5 percent of Units that are accessible to persons with mobility impairments, and a minimum of 2 percent of the Units must be accessible to persons with visual and hearing impairments. In addition, common areas and amenities must also be accessible as identified in the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671.

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 March 10, 2023.

TRD-202301036
Bobby Wilkinson
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Texas Department of Housing and Community Affairs
Effective date: March 30, 2023
Proposal publication date: January 27, 2023
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# TITLE 16. ECONOMIC REGULATION

## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

## SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

### 16 TAC §24.239

The Public Utility Commission of Texas (commission) adopts amendments to §24.239 (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental). The commission adopts this rule with changes to the proposed text as published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6713) and will be republished. The amended rule implements Texas Government Code (Tex. Gov't Code) §1502.055 as revised by House Bill 3717, enacted by the 87th Legislature. Specifically, the adopted amendments clarify the entities to which the rule applies and implement specific requirements for transactions involving the purchase of a municipal retail water or sewer utility system from a municipally owned utility (MOU).

The commission received comments on the proposed rule from Aqua Texas. Inc. (Aqua Texas) and Texas Association of Water Companies, Inc. (TAWC).

Applicability and Statutory Alignment

Tex. Gov't Code §1502.055(a) and (b) prohibit a municipality from selling a utility system unless the sale is approved by a majority vote of the qualified voters of the municipality. Subsection (d) lays out an exception to the majority vote requirement. Under this exception, a municipality can bypass the majority vote requirement for a municipal retail water or sewer utility system if the Texas Commission on Environmental Quality (TCEQ) has issued a notice of violation to the utility system, and the governing board of the municipality finds by official action that the municipality is either financially or technically unable to restore the system to compliance with the applicable law or regulations.

Section 24.239 imposes requirements on any water supply or sewer service corporation or a water and sewer utility owned by an entity required to possess a certificate of convenience and necessity that is acquiring a retail water or sewer system. Conversely, Texas Gov't Code §1502.055 imposes requirements on the sale of a utility system by a municipality. Therefore, to appropriately orient the requirements of Tex. Gov't Code §1502.055 to the structure of the rule, the statutory requirements imposed on municipalities are implemented as rule requirements applicable only to applicant purchasers that are subject to the commission's original jurisdiction and must therefore seek commission approval for the transaction under Texas Water Code §13.301. Accordingly, the adopted rule does not apply to the purchase of a municipal utility system by an entity not within the commission's jurisdiction or displace any additional requirements a municipality may have for such transactions - with the exception of any local election requirements, which are displaced statutorily by Tex. Gov't Code §1502.055(d) and discussed in further detail below.

The adopted rule recognizes the local jurisdiction of municipalities by deferring to local practices for what constitutes an "official action" by a municipality's governing board. The adopted rule also acknowledges that a municipality may determine, if applicable, which of the utility systems under its control are part of the municipal utility system being purchased as part of a transaction under this rule. Specifically, the adopted rule defines a municipal utility system as "one or more retail water or sewer utility systems that comprise all or part of the facilities used by a municipally owned utility to provide retail water or sewer utility service."

The adopted rule also respects the TCEQ's jurisdiction over its own enforcement process by interpreting "notice of violation" broadly to also include other means the TCEQ uses to notify utilities of compliance issues, such as via notices of enforcement or field citations. The adopted rule further supports the TCEQ's compliance efforts by requiring the applicant to notify the TCEQ of any transactions that are authorized based upon the issuance of a TCEQ notice of violation.

Proposed §24.239(c)(1)(A) - Transactions involving a municipal utility system; majority vote authorization

Proposed §24.239(c)(1)(A) requires an applicant to provide documentation to the commission indicating the sale has been authorized by a majority vote of the qualified voters of the municipality in an election held by the governing body of the municipality and in the manner provided for bond elections in the municipality.

TAWC recommended the phrasing of proposed §24.239(c)(1)(A) be broadened to allow the sale of a municipal utility system after an election or referendum under other applicable laws, not just bond elections. As support for this recommendation, TAWC referred to the language of Tex. Gov't Code §1502.055(d), which begins with "[n]otwithstanding Subsection (a) or other law, a municipality is not required to hold an election to authorize the sale of a [municipal water system] if...(emphasis added)." TAWC argues this shows legislative intent to cover all of the possible election requirements that might apply. TAWC provided draft language consistent with its recommendations.

Commission Response

The commission declines to amend the majority vote requirement in §24.239(c)(1)(A) to include other election or referendum types in addition to bond elections. The "[n]otwithstanding Subsection (a) or other law" statutory language cited by TAWC does not apply to this rule provision. The majority vote requirement in §24.239(c)(1)(A) is the default process for the sale of a utility system as described under Tex. Gov't Code §1502.055(a) and (b). In relevant part, Tex. Gov't Code §1502.055(a) states "[u]nless authorized by a majority vote of the qualified voters of the municipality, a municipality may not sell a utility system...." Tex. Gov't Code §1502.055(b) further clarifies that the election must be held "in the manner provided for bond elections in the municipality." Accordingly, an election authorizing a sale of a municipal utility system must be held in the manner provided for bond elections.

The language cited by TAWC only applies to the exception to the default process, allowing the governing body to authorize the sale by official action without an election in certain circumstances. The phrase "notwithstanding Subsection (a) or other law" in Tex. Gov't Code §1502.055(d) indicates the exception laid out in that subsection takes primacy over any other legal requirement that the municipality hold an election prior to the sale of the municipal utility system, including the majority vote requirement of Tex. Gov't Code §1502.055(a). For example, if a municipal ordinance required certain procedures to be followed in addition to the majority vote requirement prescribed by Tex. Gov't Code §1502.055(a), both the local ordinance and the majority vote requirement would be overridden if the conditions of Tex. Gov't Code §1502.055(d) are met. The language does not, as argued by TAWC, allow a municipality to substitute the majority voting requirements of Tex. Gov't Code §1502.055(a) and (b) with alternate requirements that may exist in other applicable laws.

The commission also modifies the rule to add a reference to Tex. Gov't Code, Chapter 1251, which governs municipal bond elections. This modification provides the location of the general law governing bond elections for reference, while also acknowledging a municipality may have additional requirements for such proceedings.

Proposed §24.239(c)(1)(B) - Transactions involving a municipal utility system; TCEQ notice of violation

Proposed §24.239(c)(1)(B) requires an applicant to provide documentation to the commission that the TCEQ has issued a notice of violation to the municipally owned utility for the municipal utility system and the governing body of the municipality has found by official action that the municipality is either financially or technically unable to restore the municipal utility system to compliance with the applicable law or regulations.

Aqua Texas and TAWC recommended language be included in §24.239(c)(1)(B) that indicates the provision is an exception to, and takes priority over, the requirement that a municipality authorize the sale of a municipal utility system by majority vote under §24.239(c)(1)(A).

Commission Response

The commission declines to modify §24.239(c)(1)(B) to clarify that it is an exception to the majority voting requirements of §24.239(c)(1)(A), because it is unnecessary. The rule requires an applicant to provide documentation of compliance with either subparagraph (A) or (B). The use of "or" indicates that if an applicant complies with subparagraph (B), it is not required to comply with subparagraph (A). This interpretation is consistent with the plain language of Tex. Gov't Code §1502.055(d).

Aqua Texas and TAWC recommended that the phrase "at an open meeting under Tex. Gov't Code Subchapter 551" be removed from proposed §24.239(c)(1)(B). Aqua Texas argued that

the phrase "official action" is sufficient to encapsulate the requirement and that municipalities should be presumed to be aware of all statutory requirements to take "official action." Aqua Texas also noted that, on a municipality-by-municipality basis, there may be additional statutory or municipal requirements for an "official action." Accordingly, the specific reference to the Open Meetings Act may not apply. TAWC similarly recommended that proposed §24.239(c)(1)(B) be revised to more accurately track the statutory language of Tex. Gov't Code §1502.055(d) and not restrict official action to actions taken at an "open meeting."

Commission Response

The commission agrees with Aqua Texas and TAWC that the requirements for a municipality's governing body taking official action may vary by municipality. The commission modifies the rule to eliminate the requirement that the official action take place "at an open meeting under Tex. Gov't Code Subchapter 551." An official action taken by the governing body in the manner generally authorized within the municipality will satisfy that relevant requirement in §24.239(c)(1)(B).

Additionally, for the reasons outlined in the commission's response to comments to §24.239(c)(3)(B) below, the commission modifies §24.239(c)(1)(B) to clarify that "any official written notification from the TCEQ, such as a notice of violation letter, a notice of enforcement letter, or a field citation, that a retail water or sewer system is out of compliance with a rule or statute within the TCEQ's jurisdiction will be considered a notice of violation."

Proposed §24.239(c)(2) - Transactions involving a municipal utility system; record of proceedings for sale authorized under (c)(1)(A)

Proposed §24.239(c)(2) requires, for sales authorized under §24.239(c)(1)(A), the applicant to provide a copy of the record of proceedings for the election authorizing the sale of the municipal utility system that complies with the requirements for bond elections in Tex. Gov't Code Subchapter 1251.

Aqua Texas and TAWC each recommended modifying the phrase "a copy of the record of proceedings...that comply with Tex. Gov't Code, Subchapter 1251." Specifically, Aqua Texas argued that the phrase "a copy of the record of proceedings" is undefined and therefore introduces ambiguity that could complicate and delay the application process. Aqua Texas also noted that the proposed language is ambiguous as it fails to identify the applicable documentation requirements of Tex. Gov't Code Subchapter 1251. TAWC opposed the specific reference to Tex. Gov't Code, Subchapter 1251, because this subchapter is specific to bond election proceedings. Aqua Texas and TAWC provided draft language consistent with their recommendations.

Commission Response

The commission modifies the rule to replace the requirement that the applicant provide a copy of the record of proceedings that complies with Tex. Gov't Code, Subchapter 1251 with a requirement that the applicant "include with its application documentation that the sale was authorized by a majority vote in an election that complies with the requirements of this section." This language addresses concerns raised by commenters by allowing the applicant to identify appropriate documentation relating to the particular practices of each municipality. However, this documentation must be sufficient to demonstrate that the requirements of this section have been met.

Proposed §24.239(c)(3) - Transactions involving a municipal utility system; transaction documentation to be provided to TCEQ and the commission

Proposed §24.239(c)(3) requires, for a sale authorized under §24.239(c)(1)(B), the applicant to provide notice to the TCEQ of the transaction by certified mail.

TAWC recommended the requirement to notify TCEQ by certified mail under proposed §24.239(c)(3) be removed from the rule because it is not a statutory requirement. TAWC recommended that, if the commission elects to preserve such a requirement, it be moved to the general public notice requirements under proposed §24.239(b).

Aqua Texas recommended that the commission remove the requirement that the notice provided to TCEQ be provided by certified mail.

Commission Response

The commission declines to remove the requirement that the applicant notify TCEQ of the sale. The issuance of a notice of violation indicates that the TCEQ may still be actively investigating or monitoring the municipal utility system. Ensuring that TCEQ has accurate information on the sale of the municipal utility system will prevent potential confusion over ownership and mitigate potential enforcement issues during and after the sale.

The commission agrees with Aqua Texas and TAWC that the notice provided to TCEQ should not be required to be provided by certified mail. The commission removes the phrase "by certified mail" from §24.239(c)(3) and specifies that notice to the TCEQ must be "in writing." Written notification is sufficient to reliably inform the TCEQ of the transaction in a manner that is verifiable.

Proposed §24.239(c)(3)(A) - Documentation to provide to the commission; copy of active notice of violation

Proposed §24.239(c)(3)(A) requires a copy of the active notice of violation from the TCEQ involving the MOU to be provided to the commission.

Aqua Texas and TAWC recommended the commission modify the term "active notice of violation" in proposed §24.239(c)(3)(A), because "notice of violation" is neither a defined term nor is it apparent from the context of the provisions what constitutes an "active notice of violation." Aqua Texas and TAWC explained that the TCEQ can notify a utility of violations in many ways, such as an investigation letter, that do not rise to the level of an "active" enforcement case. Aqua Texas and TAWC argued that a municipality should not have to wait for an "active" enforcement case before initiating the sale and repair of a non-compliant utility system. Further, such an outcome is contrary to the legislative intent of the statute to "quickly facilitate the sale of the municipal system to rectify compliance issues." Aqua Texas also contended that requiring an "active" enforcement case risks either the municipality or purchaser of the municipal utility system incurring fines or penalties, diminishing the commercial advantages of acquiring the system. TAWC also noted that Tex. Gov't Code §1502.055(d) does not require a violation be "active."

Aqua Texas recommended the "active notice of violation" requirement in proposed §24.239(c)(3)(A) be revised to permit acquisition when the municipality or the TCEQ identify noncompliance issues, regardless of whether an official notice of violation letter has been issued. In support of this recommendation, Aqua Texas noted that some violations are so severe as to require immediate action and correction. A municipality may also

identify potential violations before they become "active." Aqua Texas also contended the proposed rule language would allow the commission to determine that no "active" violation existed after the acquisition of a municipal utility system, and that the parties therefore did not comply with the requirements of §24.239 or statute. Such an outcome would force the municipality to hold a majority vote, further delaying the sale.

Commission Response

The commission removes the term "active" from the phrase "active notice of violation" used in §24.239(c)(3)(A). The commission agrees with Aqua Texas and TAWC that the term "active" is not required by statute and could result in uncertainty over when the exception to the majority vote requirement can be utilized.

Commenters also expressed concern that a municipality would still be subject to the majority vote requirement if the system was out of compliance with TCEQ rules, but the TCEQ has not yet issued a notice of violation. The commission agrees with this characterization. Under the adopted rule, and as required by statute, the exception to the majority vote requirement is not available until a notice of violation has been issued. Knowledge by the municipality that a system is out of compliance with the applicable TCEQ rules or that the TCEQ is investigating a system is not sufficient to trigger the availability of the exception. The majority vote requirement provides the voters of a municipality with a statutory right to vote on whether the municipality can sell a municipal utility system. The commission cannot, by rule, limit that statutory right until the conditions laid out in statute for the exception - including the requirement that the TCEQ has issued a notice of violation - are met.

Aqua Texas recommended that "notice of violation" be defined as "any notification from the TCEQ of an immediate violation or a condition that will result in a future violation that the municipality is either financially or technically unable to restore the system to compliance." Aqua Texas notes that the TCEQ issues a number of different types of notices to alert utilities of compliance issues including notice of violation letters, notice of enforcement letters, area of concern letters, and field citations. TAWC similarly recommended that the term "notice of violation" be construed more broadly and encompass any non-compliance notification by the TCEQ.

Commission Response

The commission agrees with Aqua Texas that the statutory term "notice of violation" should not be interpreted to only include TCEQ-issued notice of violation letters. Notice of violation letters are only one of the tools that the TCEQ uses to notify utilities of compliance issues. For example, for the most serious class of violations, the TCEQ will bypass sending a notice of violation letter entirely and initiate enforcement proceedings with a notice of enforcement letter. Not allowing a municipality that is facing compliance issues that are serious enough to merit enforcement proceedings to make use of the exception to the majority vote requirement would delay the municipality's ability to sell these systems, contrary to the intent of the statute.

The commission modifies §24.239(c)(1)(B) to clarify that "any official written notification from the TCEQ, such as a notice of violation letter, a notice of enforcement letter, or a field citation, that a retail water or sewer system is out of compliance with a rule or statute within the TCEQ's jurisdiction will be considered a notice of violation."

Proposed §24.239(c)(3)(B) - Documentation to provide to the commission; certified mail receipt of notice to TCEQ

Proposed §24.239(c)(3)(B) requires a copy of the certified mail receipt for the notice issued to the TCEQ regarding the transaction to be provided to the commission.

Aqua Texas and TAWC recommended the requirement to provide a certified mail receipt of the notice of violation be removed as it is not required by Tex. Gov't Code §1502.055(d). Aqua Texas stated that notice is generally performed via affidavit by the utility as opposed to by regulatory authorities. Aqua Texas noted that certified mail in such circumstances is "rarely, if ever, required" and that no basis exists for such a heightened requirement in the rule. TAWC commented that if the commission elects to retain the requirement to notify the TCEQ by certified mail, such notice should be permitted after an application is accepted by the commission along with other mailed notices which only require an affidavit of mailing, not a certified mail receipt.

Commission Response

The commission agrees with Aqua Texas and TAWC that the reference to certified mail in §24.239(c)(3)(B) should be deleted, because the adopted rule no longer contains the requirement that the applicant notify TCEQ of the transaction by certified mail. Accordingly, the commission replaces the phrase "a copy of the certified mail receipt for the notice to the TCEQ regarding the transaction" with "a copy of the written notice issued to the TCEQ regarding the transaction."

Proposed §24.239(c)(3)(C) - Documentation to provide to the commission; copy of official action

Proposed §24.239(c)(3)(C) requires the application to include a copy of the official action taken by the governing body of the municipality at an open meeting under Tex. Gov't Code Subchapter 551 finding the municipality is financially or technically unable to restore the municipal utility system to compliance with the applicable law or regulations.

Mirroring its recommendation for proposed §24.239(c)(1)(B), Aqua Texas recommended that the phrase "at an open meeting under Tex. Gov't Code Subchapter 551" be removed from §24.239(c)(3)(C) as the phrase "official action" is sufficient to encapsulate the requirement.

Commission Response

The commission agrees with Aqua Texas and TAWC and removes the reference to open meetings under Tex. Gov't Code Subchapter §551 from §24.239(c)(3)(C). Because the commission modified §24.239(c)(1)(B) to only require the governing body make a finding by "official action," the commission also modifies §24.239(c)(3)(C) to only require documentation of the official action.

Proposed §24.239(e)(1)(E)(i) - Notice to affected customers of municipal utility system transaction; copy of record of proceedings

Proposed §24.239(e)(1) requires notice be given to customers affected by a transaction under the rule. Proposed §24.239(e)(1)(E)(i) additionally requires a copy of the record of proceedings order be given to affected customers if the transferor is a municipality and the sale has been authorized by a majority vote of the qualified voters of the municipality under §24.239(c)(1)(A).

Aqua Texas recommended the phrase "record of proceedings order" used in proposed §24.239(e)(1)(E)(i) be revised to "documentation evidencing the sale has been authorized consistent with Tex. Gov't Code §1502.055" because the former phrase is ambiguous. Aqua Texas commented that more generalized language minimizes confusion and potential disputes over what constitutes a "record of proceedings order" and affords a municipality greater flexibility in documenting its actions related to the sale, transfer, or merger of the municipal utility system.

TAWC commented that the requirement for a "record of proceedings order" under proposed §24.239(e)(1)(E)(i) will need to be revised if the commission declines to eliminate the requirement that the election be in the manner of bond elections as TAWC recommended under §24.239(c)(1)(A). TAWC also requested clarification as to what "record of proceedings order" means and revision of proposed §24.239(e)(1)(E)(i) as appropriate.

Commission Response

The commission agrees with Aqua Texas and TAWC that the phrase "record of proceedings order" under proposed §24.239(e)(1)(E)(i) is ambiguous. The commission modifies the language of subparagraph (E) more broadly by replacing each requirement to provide affected customers with copies of specific documents, including the record of proceedings order requirement, with a requirement to provide affected customers with "a statement describing the details of the authorizing election, including the date and outcome of the election and the text of the applicable ballot provision." This modification addresses the concerns expressed by commenters, provides customers with a summary of information on how the sale was authorized, and reduces the burden of distributing potentially lengthy documents.

Proposed §24.239(e)(1)(E)(ii) - Notice to affected customers of municipal utility system transaction; copy of active notice of violation and official action

Proposed §24.239(e)(1)(E)(ii) requires, if the transferor is a municipality and §24.239(c)(1)(B) applies, the notice of violation issued to the municipal utility system by the TCEQ and a copy of the official action taken by the governing body of the municipality finding the municipality is financially or technically unable to restore the utility system to compliance, to be included as part of the notice issued to affected customers under §24.239(e)(1).

Aqua Texas and TAWC recommended the commission modify the term "active notice of violation" in proposed §24.239(e)(1)(E)(ii) as the term "notice of violation" is neither a defined term nor is it apparent from the context of the provisions what constitutes an "active" notice of violation.

Mirroring its recommendation for proposed §24.239(c)(3)(A), Aqua Texas further recommended that "notice of violation" be defined to mean "any notification from the TCEQ of an immediate violation or a condition that will result in a future violation that the municipality is either financially or technically unable to restore the system to compliance." TAWC similarly recommended that the term "notice of violation" be construed more broadly and encompass any non-compliance notification by the TCEQ.

Mirroring its recommendation for proposed §24.239(c)(3)(A), TAWC recommended that the word "active" be deleted and the phrase "at an open meeting...under Subchapter 551" language in proposed §24.239(e)(1)(E)(ii) be revised to "documentation evidencing the official action taken by the municipality finding...". TAWC commented that its proposed language more accurately tracks the statutory language of Tex. Gov't Code §1502.055(d) and does not restrict official action to those taken at an "open meeting," which is not a requirement of statute.

Commission Response

The commission agrees with Aqua Texas and TAWC and makes a number of modifications to the rule to align with similar modifications made to §24.239(c). These include removing the term "active" from "active notice of violation," construing "notice of violation" more broadly, and removing the references to the Open Meetings Act.

The commission also modifies the provisions of §24.239(e)(1)(E)(ii) to replace requirements to produce copies of specific documents with descriptions of the contents of those documents. This modification will reduce potentially burdensome distribution requirements and ensure that consumers are not provided with an unwieldy amount of information.

Pending Enforcement Actions and Penalties

Aqua Texas recommended the commission add a new subsection clarifying that a utility acquiring a utility system from a municipality is not liable for enforcement actions or penalties that are related to a notice of violation involving activities that occurred prior to the acquisition of the system by the acquiring utility. Aqua Texas explained that it is sometimes unclear whether the purchasing entity or entity selling the utility is responsible for enforcement actions or penalties that were initiated or assessed on the utility system prior to the acquisition. Aqua Texas argued that, under the proposed rule, the exception to the majority vote provision can only be triggered after a violation is known to the municipality and TCEQ, and therefore risks post-acquisition enforcement proceedings and penalties. Aqua Texas commented that such a risk would serve to discourage transactions involving a municipal utility system. Aqua Texas recommended the commission insert a provision to exempt the acquiring utility from liabilities incurred by the previous owner and provide the acquiring utility adequate time to address known compliance issues before being subject to potential enforcement actions or penalties for such issues.

Commission Response

The commission declines to add a provision to §24.239 that would address the liability of the acquiring utility for any pending enforcement actions or accrued penalties, or that would provide the acquiring utility with a grace period to come into compliance before being subject to enforcement actions. The commission does not have jurisdiction over the TCEQ's enforcement process, and Tex. Gov't Code §1502.055 does not provide any legal basis for the inclusion of such a provision.

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

The amended rule is adopted under the following provisions of the Texas Water Code and Texas Government Code: Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required

in the exercise of its powers and jurisdiction; Texas Water Code §13.301, which governs the sale, acquisition, lease, or rental of water utilities by entities required to possess a certificate of public convenience and necessity; and Texas Government Code §1502.055, which requires the sale of a utility system to be authorized by a majority vote of the qualified voters of the municipality unless certain circumstances apply.

Cross reference to statutes: Texas Water Code §13.041(a) and (b), §13.301; and Texas Government Code §1502.055.

*§24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental.*

(a) Application. A water supply or sewer service corporation or a water and sewer utility owned by an entity required to possess a certificate of convenience and necessity (CCN) must comply with this section. A municipality, district, or political subdivision may, but is not required to, comply with this section.

(b) Notice and filing requirements for approval of transaction. No later than 120 days before the effective date of any sale, transfer, merger, consolidation, acquisition, lease, or rental, an applicant must file an application with the commission and give public notice of the transaction in accordance with this section. Notice is considered given under this subsection on the later of:

(1) the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or

(2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

(c) Transaction involving a municipal utility system. A transaction involving the sale of a municipal utility system to an entity to which this section applies must comply with this subsection. For purposes of this subsection, a municipal utility system means one or more retail water or sewer utility systems that comprise all or part of the facilities used by a municipally owned utility to provide retail water or sewer utility service. If the municipal utility system being acquired does not include all of the facilities used by the municipally owned utility to provide retail water or sewer utility service, the applicant must provide sufficient detail in its application to identify the specific retail water or utility systems and facilities being acquired.

(1) A water supply or sewer service corporation or a water and sewer utility required to possess a CCN may purchase a municipal utility system if:

(A) the sale has been authorized by a majority vote of the qualified voters of the municipality in an election held by the governing body of the municipality in the manner provided for bond elections in the municipality including, if applicable, Tex. Gov't Code Title 9, Subtitle C, Chapter 1251; or

(B) the Texas Commission on Environmental Quality (TCEQ) has issued a notice of violation to the municipality for one or more of the retail water or sewer systems that comprise the municipal utility system, and the governing body of the municipality finds by official action that the municipality is either financially or technically unable to restore the retail water or sewer system or systems to compliance with the rules or statutes cited in the notice of violation. For purposes of this section, any official written notification from the TCEQ, such as a notice of violation letter, a notice of enforcement letter, or a field citation, that a retail water or sewer system is out of compliance with a rule or statute within the TCEQ's jurisdiction will be considered a notice of violation.

(2) For a sale authorized under paragraph (1)(A) of this subsection, the applicant must include with its application documentation that the sale was authorized by a majority vote in compliance with the requirements of this section.

(3) For a sale authorized under paragraph (1)(B) of this subsection, the applicant must provide notice to the TCEQ of the transaction in writing. For a sale authorized under paragraph (1)(B) of this subsection, the applicant must also include the following information to the commission as a part of its application:

(A) a copy of the notice of violation issued by the TCEQ involving the municipal utility system;

(B) a copy of the written notice provided to the TCEQ as required by this paragraph; and

(C) documentation of the official action taken by the governing body of the municipality finding the municipality is financially or technically unable to restore the municipal utility system to compliance with the rules or statutes cited in the notice of violation.

(d) Intervention period. The intervention period for an application filed under this section must not be less than 30 days. The presiding officer may order a shorter intervention period for good cause shown.

(e) Notice.

(1) Unless notice is waived by the commission, proper notice must be given to affected customers and to other affected parties as required by the commission on the form prescribed by the commission. The notice must include the following:

(A) the name and business address of the utility currently holding the CCN (transferor) and the retail public utility or person that will acquire the facilities or CCN (transferee);

(B) a description of the requested area;

(C) the following statement: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is (date 30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). If you wish to intervene, the commission must receive your letter requesting intervention or motion to intervene by that date."; and

(D) if the transferor is a nonfunctioning utility with a temporary rate in effect and the transferee is requesting that the temporary rate remain in effect under TWC §13.046(d), the following information:

*(i)* the temporary rates currently in effect for the nonfunctioning utility; and

*(ii)* the duration of time for which the transferee is requesting that the temporary rates remain in effect.

(E) if the transferor is a municipality, the notice must also provide the following information as an attachment, as applicable:

*(i)* If subsection (c)(1)(A) of this section applies, a statement describing the details of the authorizing election, including the date and outcome of the election and the text of the applicable ballot provision.

*(ii)* If subsection (c)(1)(B) of this section applies, a statement:

*(I)* indicating that the TCEQ has issued a notice of violation for one or more systems within the municipal utility system and that the governing board of the municipality has found that it is either financially or technically unable to restore the system to compliance with the applicable rules or statutes;

*(II)* providing a basic description of the violations cited in the notice of violation, including the systems involved, the nature of the violations, and the rules or statutes cited in the notice of violation; and

*(III)* describing the details of the official action of the governing board including the date and forum in which the official action was taken and how to locate a transcript or recording of the official action, if available.

(2) The transferee must mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

(3) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located. The commission may allow published notice in lieu of individual notice as required by paragraph (2) of this subsection.

(4) The commission may waive published notice if the requested area does not include unserved area, or for good cause shown.

(f) If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission will set the amount of financial assurance. The form of the financial assurance must meet the requirements of §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance to satisfy another state agency's rules.

(g) The commission will, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(h) Before the expiration of the 120-day period described in subsection (a) of this section, the commission will determine whether to require a public hearing to determine if the transaction will serve the public interest. The commission will notify the transferee, the transferor, all intervenors, and the Office of Public Utility Counsel whether a hearing will be held. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;

(3) the transferee has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or

(5) there are concerns that the transaction does not serve the public interest based on consideration of the following factors:

(A) the adequacy of service currently provided to the requested area;

(B) the need for additional service in the requested area;

(C) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;

(D) the ability of the transferee to provide adequate service;

(E) the feasibility of obtaining service from an adjacent retail public utility;

(F) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;

(G) environmental integrity;

(H) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction; and

(I) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental if conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met.

(i) If the commission does not require a public hearing, the sale, transfer, merger, consolidation, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period described in subsection (a) of this section; or

(2) at any time after the transferee receives notice from the commission that a hearing will not be required.

(j) Within 30 days of the commission order that approves the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee must provide a written update on the status of the transaction, and every 30 days thereafter, until the transaction is complete. The transferee must inform the commission of any material changes in its financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's service area.

(k) If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee must file with the commission, the following information supported by a notarized affidavit:

(1) the names and addresses of all customers who have a deposit on record with the transferor;

(2) the date such deposit was made;

(3) the amount of the deposit; and

(4) the unpaid interest on the deposit. All such deposits must be refunded to the customer or transferred to the transferee, along with all accrued interest.

(l) Within 30 days after the actual effective date of the transaction, the transferee and the transferor must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and the transferee. If there were outstanding customer deposits, the transferor and the transferee must also file documentation that customer deposits have been transferred or refunded to the customers with interest as required by this section.

(m) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed. If the sale has not been completed within that 180-day time period, the approval is void, unless the commission in writing extends the time period.

(n) If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue an order approving the transaction.

(o) A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers or service area, owned by an entity required by law to possess a CCN that is not completed in accordance with the provisions of TWC §13.301 is void.

(p) The requirements of TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(q) If a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings. This subsection does not apply to a utility facility or system sold as part of a transaction where the transferor and transferee elected to use the fair market valuation process set forth in §24.238 of this title (relating to Fair Market Valuation).

(r) For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest must provide the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.

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 March 9, 2023.

TRD-202301029
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 29, 2023
Proposal publication date: October 14, 2022
For further information, please call: (512) 936-7322

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# PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 55. RULES FOR ADMINISTRATIVE SERVICES

## SUBCHAPTER G. MANAGEMENT OF VEHICLES

### 16 TAC §§55.110 - 55.112

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 Texas Administrative Code (TAC), Chapter 55, Subchapter G, §§55.110 - 55.112, regarding the Rules for Administrative Services, without changes to the proposed text as published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6956). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules under new Subchapter G establish new rules to comply with section 2171.1045 of the Texas Government Code, which requires the adoption of rules relating to the assignment and use of the Department vehicles.

The rules under 16 TAC, Chapter 55, implement Texas Government Code, Chapter 2155, Purchasing: General Rules and Procedures; Chapter 2156, Purchasing Methods; Chapter 2161, Historically Underutilized Businesses; Chapter 2260, Resolution of Certain Contract Claims Against the State; Chapter 2261, State Contracting Standards and Oversight; Chapter 552, Public Information; and Chapter 2009, Alternative Dispute Resolution for use by Governmental Bodies. Chapter 55 also implements Civil Practice and Remedies Code, Chapter 107, Permission to Sue the State; and Chapter 154, Alternative Dispute Resolution Procedures.

SECTION-BY-SECTION SUMMARY

The adopted rules add new Subchapter G. Management of Vehicles.

The adopted rules add new §55.110, Vehicle Management Plan. The adopted rules adopt the Texas State Vehicle Fleet Management Plan developed by the Office of the Vehicle Fleet Management, Statewide Procurement Division of the Texas Comptroller of Public Accountants to the extent applicable.

The adopted rules add new §55.111, Motor Pool. The adopted rules establish that each Department vehicle, that is not assigned to a field employee, or used for undercover or surveillance activities, must be assigned to the Department motor pool and available for checkout.

The adopted rules add new §55.112, Assignment of Vehicles. The adopted rules establish the process to be used to assign a vehicle to an individual on a regular basis.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 6956). The public comment period closed on November 21, 2022. The Department did not receive any comments from interested parties on the proposed rules.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter. The adopted rules are also adopted under Texas Government Code, Chapter 2271, which requires the adoption of rules related to the assignment and use of the Department vehicles. No other statutes, articles, or codes are affected by the adopted rules.

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301042
Della Lindquist
Interim General Counsel
Texas Department of Licensing and Regulation
Effective date: March 30, 2023
Proposal publication date: October 21, 2022
For further information, please call: (512) 463-7750

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# TITLE 28. INSURANCE

## PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

### CHAPTER 165. REJECTED RISK: INJURY PREVENTION SERVICES

**28 TAC §165.1**

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC §165.1, concerning Identification and Notification of Certain Policyholders Insured by the Texas Mutual Insurance Company Acting as the Insurer of Last Resort. DWC adopts §165.1 without changes to the proposed text published in the January 20, 2023, issue of the *Texas Register* (48 TexReg 198). The rule will not be republished.

REASONED JUSTIFICATION. The amendments update obsolete Insurance Code references, add Texas Mutual Insurance Company's (Texas Mutual) physical address, and make updates for plain language and agency style. Section 165.1 requires Texas Mutual to give DWC a list of policyholders that need accident prevention services, including policyholders they insure as the insurer of last resort. It also requires policyholders who must get a safety consultation and are located outside of Texas to give information to Texas Mutual. The amendments are necessary to add Texas Mutual's physical address, so policyholders required to get a safety consultation and whose offices are outside of Texas know where to send information. The amendments also update Insurance Code references, so the public can find the applicable laws. Section 165.1 implements Insurance Code §§2054.354, 2054.504, and 2054.507, which were amended to apply to Texas Mutual by HB 3458, 77th Legislature, Regular Session (2001) and recodified by HB 2017, 79th Legislature, Regular Session (2005).

SUMMARY OF COMMENTS. DWC did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §165.1 under Insurance Code §§2054.354, 2054.504, and 2054.507 and Labor Code §§402.00111, 402.00116, and 402.061.

Insurance Code §2054.354 provides that Texas Mutual must develop statistical and other information to allow Texas Mutual to distinguish between their writings in the voluntary market and as the insurer of last resort.

Insurance Code §2054.504 requires certain policyholders insured under Subchapter H to get a safety consultation.

Insurance Code §2054.507 requires that, if a safety consultant identifies a hazardous condition or practice, an accident plan will be developed for the policyholder.

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 March 6, 2023.

TRD-202301012
Kara Mace
Deputy Commissioner for Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: March 26, 2023
Proposal publication date: January 20, 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 36. SUSPENSION OR ADJUSTMENT OF WATER RIGHTS DURING DROUGHT OR EMERGENCY WATER SHORTAGE

**30 TAC §§36.1 - 36.8**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of 30 Texas Administrative Code (TAC) Chapter 36, §§36.1 - 36.8.

Repealed §§36.1 - 36.8 are adopted *without changes* to the proposed text as published in the October 7, 2022, issue of the *Texas Register* (47 TexReg 6559), and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

During severe drought in 2013, The Dow Chemical Company (TDCC), as a senior water right holder, made a priority call in the Brazos River Basin. In response to the call, the executive director (ED) issued orders suspending junior water rights. The ED, however, chose to suspend only specific rights, which he was allowed to do under 30 TAC §36.5(c). Members of the Texas Farm Bureau were among those with rights junior to TDCC's that were suspended under the ED's orders; and in response, Texas Farm Bureau, and other individual plaintiffs, filed a lawsuit against the TCEQ challenging the validity of TCEQ's drought rules found in 30 TAC Chapter 36. The 53rd District Court, Travis County, declared the drought rules invalid. TCEQ appealed; and the 13th Court of Appeals, Corpus Christi, affirmed the District Court's decision. As these rules are no longer valid, 30 TAC Chapter 36 is repealed. This repeal will also improve the overall organization of TCEQ rules related to the Water Rights Program.

Section by Section Discussion

This rulemaking adoption repeals 30 TAC Chapter 36 in its entirety.

Final Regulatory Impact Analysis

The commission reviewed the rulemaking adoption 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 rulemaking adoption 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 repeal 30 TAC Chapter 36 in its entirety because the chapter was declared void in a lawsuit challenging the validity of the rules.

Second, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because the adoption would 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 adoption will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the repeal will not adversely affect in a material way the economy, a sector of the economy, competition, or jobs.

Finally, the rulemaking adoption 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 rulemaking adoption does not meet any of the four preceding applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law for the regulation of water rights; 2) does not exceed any express requirements of state law related to the regulation of water rights; 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 as the commission adopts the rulemaking action under Texas Water Code, §§5.013, 5.102, 5.103, 5.105, and 5.120. Therefore, the commission does not adopt this rulemaking action solely under the commission's general powers.

Since this rulemaking adoption does not meet the statutory definition of a "Major environmental rule" and does not 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.

Takings Impact Assessment

The commission evaluated this rulemaking and performed an analysis of whether the adopted repeal would 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 repeal would not constitute a taking as that term is defined under Texas Government Code, §2007.002(5). Specifically, the adopted repeal would not affect any landowner's rights in private real property, and there are no burdens that would be imposed on private real property by the adopted repeal; the adopted repeal is solely procedural and does not impact real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted repeal and found that it is neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/au-

thorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted repeal is 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.

Public Comment

The commission offered a public hearing on November 10, 2022. The comment period closed on November 10, 2022. One comment was received.

Comment

An individual expressed appreciation for the work of TCEQ's water rights staff. The commenter stated they understood the need to repeal the current rules; however, the commenter indicated that stakeholders had questions about TCEQ's next steps once the rules are repealed since the Chapter 36 rules are the only rules that implement TWC, Section 11.053. The commenter noted that TWC, Section 11.053(c) requires the TCEQ to adopt rules to implement that section and indicated that stakeholders would be interested in working with TCEQ staff after the current legislative session on any potential future rulemaking.

*Response*

The Commission appreciates the comment. Public participation is an integral part of the rulemaking process and the Commission encourages interested stakeholders to participate in any future rulemakings that could be initiated after the current Chapter 36 rules are repealed.

Statutory Authority

Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state, including water rights; TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction; TWC, §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; and TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state.

No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on March 10, 2023.

TRD-202301050

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: March 30, 2023

Proposal publication date: October 7, 2022

For further information, please call: (512) 239-2678

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# CHAPTER 292. SPECIAL REQUIREMENTS FOR CERTAIN DISTRICTS AND AUTHORITIES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §292.1 and §292.13.

Section 292.1 and §292.13 are adopted without changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7393) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking adoption amends 30 Texas Administrative Code (TAC) Chapter 292 for consistency with the repeal of Texas Water Code (TWC), Chapter 9 and the abolishment of the Central Colorado River Authority. Additionally, this rulemaking adoption amends Chapter 292 to remove or revise outdate references to Industrial Development Bonds and Pollution Control Bonds and Historically Underutilized Businesses (HUB) requirements.

Section by Section Discussion

Additional changes are adopted to clarify language and are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

*§292.1, Objective and Scope of Rules*

The commission adopts amendments to §292.1(a) to account for the repeal of TWC, Chapter 9 made during the 80th Texas Legislature, Regular Session, 2007, in Senate Bill (SB) 3 by Senator Kip Averitt related to the development, management, and preservation of the water resources of the state; providing penalties. The commission also adopts amendments to §292.1(a)(5) by deleting the reference to the Central Colorado River Authority and by renumbering the remaining subsections in this section. The Central Colorado River Authority was dissolved by the 85th Texas Legislature, Regular Session, 2017, in SB 2262 by Senator Charles Perry.

*§292.13, Minimum Provisions*

The commission adopts amendments to §292.13(5) to remove an outdated reference to Industrial Development Bonds and Pollution Control Bonds from the minimum requirements for administrative policies adopted by the boards of the authorities subject to Chapter 292. Industrial Development Bonds and Pollution Control Bonds are no longer used by these entities. The commission also adopts amended §292.13(6)(B) to update the reference to HUB requirements that must be included in the administrative policies of the authorities subject to Chapter 292.

Final Regulatory Impact Determination

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

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the adopted

rulemaking is to implement legislative changes enacted by SB 3 from the 80th Texas Legislature and SB 2262 from the 85th Texas Legislature and to delete or revise outdated references in the rule.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the 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. The cost of complying with the adopted rules is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). The adopted rulemaking does not exceed a standard set be federal or state law. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the rulemaking is adopted pursuant to the commission's specific authority in Texas Water Code §5.013, which gives the commission continuing supervision over districts, and Texas Water Code §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

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

Takings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to implement SB 3 from the 80th Texas Legislature relating to the development, management, and preservation of the water resources of the state, and SB 2262 from the 85th Texas Legislature relating to the dissolution of the Central Colorado River Authority and to delete or revise outdated references in the rule. The adopted rules would advance this purpose by making the commission's rules consistent with SB 3 and SB 2262 and by deleting or revising outdated references.

Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. These rules will not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking will not burden nor restrict the owner's right to property. These provisions will not impose any burdens or restrictions on private real property. Therefore, the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the amended sections are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the rules affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

Public Comment

The commission held a public hearing on December 7, 2022. The comment period closed on December 7, 2022. The commission received comments from Chambers County Improvement District No. 2, Chambers County Improvement District No. 3, Chambers County Municipal Utility District No. 4, Masterson Advisors LLC (MALLC), Schwartz Page & Harding LLP, and Utility District Advisory Corporation (UDAC). All comments received were in support of the rulemaking without changes.

## SUBCHAPTER A. GENERAL PROVISIONS

### 30 TAC §292.1

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

The adopted amendment implements Senate Bill (SB) 3 from the 80th Texas Legislature, 2007, related to the development, management, and preservation of the water resources of the state; and it implements SB 2262 from the 85th Texas Legislature, 2017, relating to the dissolution of the Central Colorado River Authority.

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 March 13, 2023.

TRD-202301051
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 2, 2023
Proposal publication date: November 4, 2022
For further information, please call: (512) 239-2678

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## SUBCHAPTER B. ADMINISTRATIVE POLICIES

### 30 TAC §292.13

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

The adopted amendment implements SB 3 from the 80th Texas Legislature, 2007, related to the development, management,

and preservation of the water resources of the state; and it implements SB 2262 from the 85th Texas Legislature, 2017, relating to the dissolution of the Central Colorado River Authority.

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 March 13, 2023.

TRD-202301052
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: April 2, 2023
Proposal publication date: November 4, 2022
For further information, please call: (512) 239-2678

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# CHAPTER 293. WATER DISTRICTS
## SUBCHAPTER E. ISSUANCE OF BONDS

### 30 TAC §293.59

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts an amendment to §293.59.

Section 293.59 is adopted without changes to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7396) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking adopts to amend 30 Texas Administrative Code (TAC) Chapter 293 as a follow-up to a rule petition and stakeholder engagement. The rule petition was considered by the Commissioners at the June 9, 2021, Agenda. The Commissioners directed the ED to initiate rulemaking to address the request contained in the rule petition. In addition, TCEQ staff solicited stakeholder input on the issues raised by the rule petition from all potentially affected districts located in Chambers County and received four letters filed in support of the changes requested in the rule petition.

Section by Section Discussion

Additional changes are adopted to clarify language and are considered non-substantive and not specifically addressed in the Section by Section Discussion of this preamble.

*§293.59, Economic Feasibility of Project*

The commission adopts to amend §293.59(k)(3)(A) to add Chambers County to the list of counties subject to the $1.50 projected feasibility tax rate limit; and revise 30 TAC §293.59(k)(4)(A) to add Chambers County to the list of counties subject to the $2.50 no-growth feasibility tax rate limit as a follow-up to a rule petition and stakeholder engagement. As discussed in the rule petition requesting this change, which was heard by the Commission on June 9, 2021, the changes will increase the limit the combined projected tax rate and combined no-growth tax rate for a district's first and subsequent bond issues for districts located in Chambers County.

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 §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The primary purpose of the adopted rulemaking is to revise Texas Administrative Code §§293.59(k)(3)(A) and 293.59(k)(4)(A) to add Chambers County to the counties subject to the $1.50 projected feasibility tax rate limit and the $2.50 no-growth feasibility tax rate limit in response to a rule petition and stakeholder input.

In addition, the 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. The cost of complying with the adopted rules is not expected to be significant with respect to the economy.

Furthermore, the adopted rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code §2001.0225(a). There are no federal standards governing the area of tax rate limits with respect to water districts. Second, the adopted rulemaking does not exceed an express requirement of state law. Third, the adopted rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the adopted rulemaking will be adopted pursuant to the commission's specific authority in Texas Water Code §5.013, which gives the commission continuing supervision over districts, and Texas Water Code §12.081, which allows the commission to issue rules necessary to supervise districts and authorities. Therefore, the rules are not adopted solely under the commission's general powers.

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

Takings Impact Assessment

The commission evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of this rulemaking is to ensure that Chambers County has the appropriate tax rate limit under the commission's bond review rules. The adopted rules will advance this stated purpose by revising the relevant rules in Chapter 293 of 30 Texas Administrative Code.

Promulgation and enforcement of these rules will constitute neither a statutory nor a constitutional taking of private real property. These rules will not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking will not burden nor restrict the owner's right to property. These provisions will not impose any burdens or restrictions on private real property. Therefore,

the amendments do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the sections adopted for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeals affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

Public Comment

The commission held a public hearing on December 7, 2022. The comment period closed on December 7, 2022. The commission received comments from Chambers County Improvement District No. 2, Chambers County Improvement District No. 3, Chambers County Municipal Utility District No. 4, Masterson Advisors LLC (MALLC), Schwartz Page & Harding LLP, and Utility District Advisory Corporation (UDAC). All comments received were in support of the rulemaking without changes.

Statutory Authority

This amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; and TWC, §5.105, which establishes the commission's authority to set policy by rule. In addition, TWC, §5.013 gives the commission continuing supervision over districts, and TWC, §12.081 gives the commission the authority to issue rules necessary to supervise districts.

Therefore, the TWC authorizes rulemaking that amends §293.59(k), which relates to the projected tax rate and no-growth tax rate for proposed bond issuances.

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 March 13, 2023.

TRD-202301053
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Acting Deputy Director, Environmental Law Division
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Effective date: April 2, 2023
Proposal publication date: November 4, 2022
For further information, please call: (512) 239-2678

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